

CHAPTER 18

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Article I. General Provisions

Sec. 18-101. Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for purposes of this chapter, have the meanings given them in this section.

“Alcohol” means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

“Alcoholic liquor” means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than 3.2% alcohol by weight.

“Barrier” means any natural or manmade obstruction which precludes direct traffic between a church or school and a private club, drinking establishment or a place of business where cereal malt beverages are sold, and is of such a character that it

completely separates such establishments, including parking facilities. Barriers include, but are not limited to, rivers, railroad tracks, levees and drainage ditches.

“Beer” modified or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water, and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

“Beneficial interest” shall not include any interest a person may have as owner, operator, lessee or franchise holder of a licensed hotel or motel on the premises of which a club or drinking establishment is located.

“Bus” means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

“Caterer” means an individual, partnership, or corporation which sells alcoholic liquor by the individual drink and provides services related to the serving thereof on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

“Cereal malt beverage” means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2% alcohol by weight.

“City” means the City of Hutchinson, Kansas.

“Class A Club” means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the Director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests who accompany them.

“Class B Club” means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

“Club” means a Class A or Class B club.

“Club and Drinking Establishment Act” means the Kansas Club and Drinking Establishment Act, K.S.A. 41-2601 and following, and amendments thereto.

“Conviction,” “Convicted,” “Adjudged Guilty” and other words of like import shall include being placed on diversion, regardless of whether any such diversion program is successfully completed.

“Crime of Moral Turpitude” means a crime involving dishonesty.

“Department” means the Kansas Department of Revenue.

“Director” means the director of alcoholic beverage control of the Department.

“Distributor” means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under the Kansas liquor control act or cereal malt beverage for sale or resale to retailers licensed under the cereal malt beverage act, K.S.A. 41-2702 and amendments thereto.

“Drink of alcoholic liquor” means one individual serving of any beverage containing alcoholic liquor.

“Drink of cereal malt beverage” means one individual serving of cereal malt beverage, not to exceed 12 ounces.

“Drinking establishment” means premises which may be open to the general public, where alcoholic liquor by the individual drink is served.

“Employee” means any person employed in the business of selling cereal malt beverages or alcoholic liquor by a licensee.

“Food” means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

“Governing Body” means the governing body of the City of Hutchinson, Kansas.

“Gross revenues” means only that income derived from cereal malt beverages, alcoholic liquor and other food consumables.

“Hotel” has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.

“K.S.A.” means the Kansas Statute Annotated, as they are from time-to-time amended.

“Liquor Control Act” means the Kansas Liquor Control Act.

“Licensee” means any person to whom a current cereal malt beverage license has been issued by the governing body of the City, authorizing the sale of cereal malt beverages and/or any person to whom a current club, drinking establishment, hotel, caterer's, or temporary license has been issued by the Department, authorizing the sale of alcoholic liquor.

“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

“Manufacturer” shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

“Minor” means any person under 21 years of age.

“Morals charge” means a charge involving prostitution; procuring any person; soliciting a child under 18 years of age for any immoral act involving sex; possession or sale of a narcotic, marijuana, amphetamines or barbiturates; rape, incest; gambling; illegal cohabitation; adultery; bigamy; or a crime against nature.

“Open saloon” means a place, public or private, where alcoholic liquor is sold or offered or kept for sale by drink or in any quantity of less than 100 milliliters (3.4 fluid ounces) or sold or offered or kept for sale for the consumption on the premises where sold, but does not include any premises where the sale of liquor is authorized by this article and by the Club and Drinking Establishment Act, or any microbrewery or farm winery, if authorized by Kansas statute.

“Original package” means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor or cereal malt beverage, to contain and to convey any alcoholic liquor or cereal malt beverage.

“Person” means any natural person, corporation, partnership or association.

“Place of business” means any place, except a tavern, at which cereal malt beverage and/or alcoholic liquor are sold.

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

“Public place” means any place to which the general public has access and a right to remain for business, entertainment or other lawful purposes, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas and parks.

“Restaurant” means a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto which, as determined by the director, derives not less than 50% of its gross revenues in each month of a calendar year from the sale of food for consumption on the premises.

“Retailer” means any person who sells or offers for sale any cereal malt beverage or alcoholic liquor, as the context may require, for use or consumption off the licensed premises of the retailer.

“Sale” means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration; and includes all sales made by any person, whether as principal, proprietor, agent, servant or employee.

“Sell at retail” and **“sale at retail”** mean sales for use or consumption and not for resale in any form, and includes sales of beer or cereal malt beverage in a keg returnable to the seller. Such terms shall not mean or include sales by a distributor or sales by one retailer to another, or sales to clubs, licensed drinking establishments, licensed caterers, or holders of temporary permits, or sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

“Special event” means a picnic, bazaar, fair, festival or similar gathering where a temporary permit for the sale of cereal malt beverages is issued pursuant to regulations established by this chapter.

“Spirits” means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whisky, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

“Tavern” means any business establishment, licensed to sell cereal malt beverages for consumption on the premises, that derives in any one month of the calendar year less than 30% of its gross revenues from the sale of food for consumption on the premises.

“Class 1 Tavern” means a tavern to which persons younger than twenty-one (21) years of age may not be admitted under any circumstances.

“Class 2 Tavern” means a tavern to which persons over the age of seventeen (17) may be admitted although no one younger than twenty-one (21) years of age may purchase or possess cereal malt beverages.

“Temporary permit” shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.

“This State” means the state of Kansas.

“To sell” includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

“Wine” means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such

beverages containing alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

“**Wholesaler**” shall have the meaning ascribed to it by K.S.A. 41-2701 and amendments thereto.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Article II. Licenses

Alcoholic Liquor

Sec. 18-201. License required.

No person shall operate a club, drinking establishment, as a caterer serving alcoholic liquor or operate pursuant to a temporary permit without first having in his or her possession for each place of business as provided by this chapter, unexpired and unrevoked licenses issued by the State of Kansas and the City. *(Ord. 2007-13, Adop. 4/03/07)*

Sec. 18-202. Persons ineligible for City license.

No license shall be issued under the provisions of this article to:

- a. A person who does not possess a valid alcoholic liquor license issued by the state of Kansas;
- b. A person who has not been a citizen of the United States for at least ten (10) years;
- c. A person who has been convicted of a felony under the laws of any state or of the United States;
- d. A person who has had a license revoked for cause under the provisions of Article 26 of Chapter 41 of the Kansas Statutes Annotated;
- e. A person who has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;
- f. A person who has been convicted of being a proprietor of a gambling house or of pandering or other crimes or other offenses involving morals charges or moral turpitude, or who has forfeited a bond to appear in court to answer charges of such a nature, or a person who is a law enforcement official or an employee of the Director;
- g. A person who is not at least 21 years of age;

h. A person who, other than as a member of the governing body of the City or of Reno County, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the Director, except that the provisions of this subsection shall not apply to prohibit the issuance of a license for a Class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof;

i. A person who intends to carry on the business authorized by the license as an agent of another;

j. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application, except as provided in subsection "l" of this section;

k. A person who has not been a resident of the state of Kansas for a period of at least one (1) year immediately preceding the date of application;

l. A person who does not own the premises for which a license is sought, or does not have a written lease thereon for at least three-fourths of the period for which the license is to be issued; provided, that this subsection shall apply only to applicants for a club license or a drinking establishment license;

m. Any person if the spouse of such person would be ineligible to receive such license hereunder for any reason other than citizenship, residence requirements or age; provided, that this subsection shall not apply in determining eligibility for a renewal license;

n. A person who is not a resident of Reno County, Kansas;

o. A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retailing of alcoholic liquor or a beneficial interest in any other club, drinking establishment or caterer licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and this chapter, except that:

(1) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more clubs or drinking establishments licensed hereunder if such other clubs or drinking establishments are located in hotels;

(2) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants;

(3) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer;

(4) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the Liquor Control Act if such distributor or retailer sells no alcoholic liquor to such club; and

(5) A license for a class B club or drinking establishment may be granted to a person who has a beneficial interest in a microbrewery or farm winery licensed pursuant to the Liquor Control Act.

p. A partnership, unless all of the partners are qualified to obtain a license;

q. A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a club license hereunder for any reason other than citizenship or residence requirements;

r. A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation has been an officer, manager or director, or a stockholder owning in the aggregate more than 5% of the common or preferred stock of a corporation which:

(1) Has had a license revoked under the provisions of the Club and Drinking Establishment Act; or

(2) Has been convicted of a violation of the Club and Drinking Establishment Act or the cereal malt beverage or alcoholic liquor laws of the City or this state; or

s. A corporation organized under the laws of any state other than this State.

Sec. 18-203. License exclusive to premises issued.

a. The license provided for herein shall be issued for one particular premises which shall be described in the application and the license. No license shall be issued for premises wherein the use thereof would be in violation of City Code, the City's land use regulations, building regulations or fire protection regulations. Nothing in this section shall be construed to require a fixed premises for persons licensed as a caterer pursuant to Article 26 of Chapter 41 of Kansas Statutes Annotated.

b. Any licensed premises which includes the exterior of a building and/or an outdoor area shall be adequately lighted during all business hours.

c. Any licensed premises which includes the exterior of a building shall be enclosed by a fence in such a way as to allow access only through the interior of the building.

d. Any licensed premises which is an outdoor area shall have its boundaries clearly marked or fenced so as to allow access only through an official gate or entrance.
(Ord. 2007-13, Adop. 4/03/07)

Sec. 18-204. Revocation of license.

a. The governing body shall immediately revoke the license of any licensee whenever the State license of the licensee is revoked by the state for any reason.

b. The governing body, upon five (5) days written notice to a person holding a license to sell alcoholic liquor, may revoke such license for any of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefore or any hearing thereon;

(2) The nonpayment of any license fee payable pursuant to this chapter;

c. Within twenty (20) days after the order of the governing body revoking or suspending any license, the licensee may appeal from such order in the manner provided by law; provided, that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of the appeal. In case of the revocation of a licensee of any licensee, no new license shall be issued to such person or to any person acting for or on behalf of such person, for a period of six months after the revocation becomes effective.

(Ord. 2007-13, Adop. 4/03/07)

Sec. 18-205. Display of license.

Every licensee shall cause his or her license to be framed and hung in plain view in a conspicuous place on the licensed premises at all times when such license is in force.

(Ord. 2007-13, Adop. 4/03/07)

Sec. 18-206. Right of entry and inspection.

The right of immediate entry to and inspection of any premises where alcoholic liquor is 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 the 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 required herein, the chief of police shall report such refusal to the Director. (Ord. 2007-13, Adop. 4/03/07)

Cereal Malt Beverages

Sec. 18-210. License required; sales not authorized by license.

a. No person shall sell any cereal malt beverage at retail within the corporate limits of the City without having in his or her possession for each place of business an unexpired and unrevoked license issued by the City, all as provided in this chapter.

b. A person holding a license to sell cereal malt beverages at retail may sell such products only in original and unopened containers, not for consumption upon the premises. A person holding a license to sell cereal malt beverages for consumption on the premises may not sell cereal malt beverages for consumption off the premises.

c. A special event license (as described in K.S.A. 41-2703(e)) may be issued for the sale of cereal malt beverages for consumption on the licensed premises of a special event. Such license shall be issued only for the day(s) named therein and, in any event, shall not exceed three (3) consecutive days. A special event license shall specify the premises for which the license is issued. The dates and hours of operation during the special event shall be specified in the license. A special event license shall not be issued to the same person or organization more than four times in any one calendar year period.

(Ord. 2011-15, Atop. 8/16/11; 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-211. Application for license; investigation of applicant.

a. Any person desiring to secure a license under the provisions of this article shall make a verified application in duplicate; both copies shall be filed with the City Clerk. Such application shall be on a form provided by the City Clerk and shall contain:

(1) The name and residence of the applicant and how long he or she has resided within the state.

(2) The particular place for which a license is desired. If an applicant desires to include as a part of the licensed premises any area other than the interior of a building the applicant shall attach a drawing of the proposed licensed premises to each copy of the application.

(3) The name of the owner of the premises upon which the place of business is located.

(4) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not, within two (2) years immediately preceding the date of making the application, been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs, or of the violation of any other intoxicating liquor law of any city, state or of the United States.

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

(6) If the application is for a tavern license, a statement whether the business will permit minors 18 years of age or older to be present on or within the licensed premises.

b. Such application shall be accompanied by the license fee provided for by ordinance, together with an amount sufficient to pay such investigative fees as are made by the Kansas Bureau of Investigation for the processing of fingerprints.

c. One (1) copy of such application shall immediately be transmitted by the City Clerk to the Chief of Police of the City for investigation of the applicant. It shall be the duty of the Chief of Police to investigate such applicant to determine whether he is qualified as a licensee under the provisions of this chapter. He shall report to the City Manager not later than ten (10) working days subsequent to the receipt of such application by the City Clerk. The City Manager shall schedule the application for consideration by the governing body at the earliest meeting consistent with current notification requirements.

d. No application for the issuance of a cereal malt beverage license shall be granted unless the applicant is first photographed and fingerprinted by the police department.

e. The City Manager or his designee may, on behalf of the Governing Body, approve the renewal of a license for an establishment, the application of which contains no changes from the previous year other than the identification of a new manager. Such application will be subject to review by the Chief of Police and other City departments before being eligible for approval by the City Manager.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7248, Adop. 9/27/88; Ord. 7142, Adop. 7/19/88)

Sec. 18-212. Consideration of application by governing body.

a. If the application for a license is in proper form, accompanied by the license fee and other required fees and all required inspections and investigations have been satisfactorily completed, the governing body shall, if it approves the same, issue a license to the applicant; provided, that no license shall be issued to:

(1) A person who is not a resident of the City or of Reno County, and who has not been a resident in good faith of the State at least one (1) year prior to the application and a resident of Reno County for at least six (6) months prior to the filing of the application;

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

(3) A person who is not a citizen of the United States;

(4) A person who, within two (2) years immediately preceding the date of making application, has been convicted of a felony or of any crime involving moral turpitude, or been adjudged guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs, or of the violation of any other intoxicating liquor law of any city, state or of the United States;

(5) A partnership, unless all members of such partnership shall otherwise be qualified to obtain a license;

(6) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 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, this chapter or its counterpart in any other municipality; or

(b) has been convicted of a violation of the Club and Drinking Establishment Act, the cereal malt beverage laws of this state, this chapter or its counterpart in any other municipality.

(8) 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; or

(9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age; provided, that this paragraph (9) shall not apply in determining eligibility for renewal of a license.

b. No license shall be issued for the sale of cereal malt beverages on premises located within 200 feet of any church or public or parochial school and, in addition, no tavern shall be located within 150 feet of a residential zoning district. Such distances shall be measured from the nearest property line of the residential zoning district, church or school to the nearest portion of the exterior of the specific portion of the building in which cereal malt beverages are proposed to be sold or in the event that the licensed premises are located on or include the exterior of a building or an outdoor area, the distance shall be measured to the nearest boundary line of such licensed area; provided, that where the

premises to be licensed is separated from a church or school by expressways or arterial streets as designated, or as may be designated from time to time, or where the premises to be licensed is separated from the church or school by a barrier as defined herein, then the above distance requirements shall not apply. These exceptions to the distance requirement of 200 feet from any church or school shall not apply to premises which are to be used as taverns. For the purposes of this chapter, the existence of a barrier shall be determined by the City building official.

c. Renewal of licenses may be made for all establishments presently licensed within 200 feet of any church or public or parochial school or within 150 feet of a residential zoning district, so long as the premises are used or held for use as a tavern or building in which cereal malt beverages are sold. In the event such an establishment ceases to be used for such purposes for a period of 90 days or more, or such premises is used for any other type of business, no new license shall be issued for the sale of cereal malt beverages on such premises. Periods of time during which taverns or other buildings in which cereal malt beverages are sold are being remodeled or are being repaired because of damage caused by fire or natural disasters shall not be included in computing the above 90 day period; provided, that the remodeling or repair must have been commenced within 90 days after closure of such tavern or other building and completed within a reasonable time thereafter. The licensee of any place of business affected by this subsection shall notify the detective division of the City's police department whenever such tavern or building is to be closed for remodeling or repairs. Such notice shall state the date when remodeling will start and the date it will be completed.

d. The distance requirements set out in this subsection shall not apply to a retailer of cereal malt beverages.
(*Ord. 2007-13, Adop. 4/03/07; Ord. 2000-31, Adop. 10/31/00; Ord. 7142, Adop. 7/19/88*)

Sec. 18-213. Transferability of license.

No license issued under the provisions of this chapter shall be transferable; provided, that upon the death of a licensee, the surviving spouse, executor or administrator, if otherwise qualified, shall be entitled to the use of said license during the remainder of the license year. (*Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88*)

Sec. 18-214. Posting of license.

The license so issued to a tavern or place of business to sell cereal malt beverages shall be kept continuously posted in a conspicuous place in such tavern or place of business. (*Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88*)

Sec. 18-215. Suspension of license.

a. The Chief of Police, upon five (5) days' written notice to a person licensed to sell cereal malt beverages pursuant to this article, may suspend such license for a period not to exceed seven (7) days for any cause for which suspension or revocation is authorized by any provision of this Code, and which act or omission does not in his or her judgment justify revocation of such license. The licensee may appeal such order of suspension to the governing body within seven (7) days from the date thereof. In the event such order of suspension is upheld by the governing body the licensee may appeal to the district court of Reno County in the manner provided by K.S.A. 41-2708 and amendments thereto. Any appeal taken from an order of the Chief of Police shall stay the order of suspension until the matter is resolved by the governing body. Any appeal to the District Court shall not stay the order of the governing body.

b. The Chief of Police or any other officer specifically authorized by the Chief of Police, may temporarily suspend a license for the sale of cereal malt beverage when in his or her judgment such action is necessary to preserve or restore the public peace. Any such suspension shall be effective upon delivery of a written order to the licensee or any other person in control of the licensed premises. No such order of suspension shall be for a period longer than 24 hours; provided, that the Chief of Police or other authorized officer may extend such suspension for additional 24 hour periods up to a total of 72 hours. *(Ord. 2007-13, Adop. 4/03/07; Ord. 7248, Adop. 9/27/88; Ord. 7142, Adop. 7/19/88)*

Sec. 18-216. Compliance with health and sanitation requirements.

The licensee, in the operation of a place of business or tavern selling cereal malt beverage for which a license is issued, shall at all times comply with all of the sanitary and health requirements and ordinances of the City. *(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)*

Sec. 18-217. Revocation or suspension of license.

a. The governing body, after a hearing held upon five (5) days written notice to a person holding a license to sell cereal malt beverages, shall revoke such license or cause the same to be suspended for a period not to exceed thirty (30) days, for any of the following reasons:

(1) The licensee fraudulently obtained the license by giving false information in the application therefore;

(2) The licensee, manager, employee or agent has violated any of the provisions of this chapter or any rule or regulation promulgated by the governing body of the City;

(3) The licensee has become ineligible to obtain a license under this chapter;

(4) Drunkenness of the licensee or a manager, employee or agent while on duty and while on the premises for which such license is issued;

(5) The licensee or a manager, employee or agent permits any intoxicated person to remain in such place of business;

(6) The sale or gift, by a licensee, manager, employee or agent, of cereal malt beverages to those under 21 years of age;

(7) The nonpayment of any license fees or other fees or charges payable to the City hereunder;

(8) For a licensee, manager, employee or agent to permit gambling in or upon licensed premises;

(9) For a licensee, manager, employee or agent to permit any person to mix drinks with materials purchased in such place of business or brought in for that purpose, unless such place of business is also licensed as a club or drinking establishment under the laws of the State;

(10) For employment of persons under 21 years of age in dispensing cereal malt beverages in a tavern, or under 18 years of age in dispensing cereal malt beverages in a food service establishment or for off premises consumption;

(11) For employment of a person who has been adjudged guilty of a felony, an offense involving a morals charge, a crime of moral turpitude or a violation of an alcoholic liquor or drug charge. The chief of police may require any employee to submit to fingerprinting to determine if a violation of this section has occurred; the failure of an employee to submit to fingerprinting, if required by the chief of police, shall be prima facie evidence that such employee is ineligible for employment under the provisions of this paragraph;

(12) For the sale or possession of or for permitting any person to use or consume upon or in said premises alcoholic liquor, as defined in this Code, except in a place of business licensed as a club or drinking establishment pursuant to this chapter and Article 26 of Chapter 41 of Kansas Statutes Annotated;

(13) For failure to maintain sufficient records to determine the percentage of gross revenues obtained from sales of cereal malt beverage;

(14) For failure to permit the inspection of such records at all times during business hours by proper agents of the City;

(15) For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;

(16) For selling or providing cereal malt beverage to any person who is intoxicated and who thereafter and by reason of such intoxication or where such intoxication is a contributing factor, violates any ordinance of the City, or law of the State or of the United States.

(17) For violation of any provision of this chapter relating to the presence of a minor in or upon licensed premises, to the possession or consumption of cereal malt beverage by a minor in or upon licensed premises or to cereal malt beverage obtained by a minor from a licensee, regardless of where possessed or consumed.

b. In the event a licensee has been subject to two suspensions pursuant to this Code within the preceding twelve (12) month period, his or her license shall be revoked upon the third such violation.

c. Within twenty (20) days after the order of the governing body suspending or revoking any license, the licensee may appeal from such order to the District Court of Reno County in the manner provided by K.S.A. 41-2708 and amendments thereto; provided, that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of any such appeal. In case of the revocation of a license, no new license shall be issued to such person or to any person acting for or on behalf of such person, for a period of one (1) year after such revocation becomes effective.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-218. Regulation of certain business relationships.

a. Except to the extent permitted by the provisions of K.S.A. 41-703 and amendments thereto, no retailer or officer, associate, member, representative or agent thereof, shall accept, receive or borrow money or anything else of value, or accept or receive credit, directly or indirectly from:

(1) any manufacturer or distributor;

(2) any person connected with, in any way representing or a member of the family of the manufacturer or distributor;

(3) any stockholders in a manufacturer or distributor; or

(4) any officer, manager, agent or representative of a manufacturer or distributor.

b. Any licensee who shall permit or assent, or be a party in any way to any violation or infringement of the provisions of this section, or of the provisions of K.S.A. 41-702 or 47-703 and amendments thereto, which are adopted and incorporated by reference herein, shall be deemed guilty of a misdemeanor.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-219. Wholesale license.

It shall be unlawful for any wholesaler or distributor, or any agent or employee thereof, to sell or deliver cereal malt beverages within the corporate limits of the City to persons authorized under this chapter to sell the same within this City, unless such wholesaler or distributor has first secured a license from the City Clerk and a registration from the State, authorizing such sales as provided by law. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-220. Record keeping; inspections.

Every place of business or tavern shall maintain sufficient records to indicate the percentage of gross revenues obtained from the sale of cereal malt beverages, shall permit inspection of such records at all times during business hours by the City Clerk or by any person designated by him and shall furnish at his or her own expense copies of any such records promptly upon request of the City Clerk. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-221. Lighting and enclosure requirements.

a. The interior of any building wherein cereal malt beverages are sold pursuant to a license issued pursuant to this chapter shall be adequately lighted during all business hours with a minimum of at least one foot-candle of light 30 inches above the floor in all portions of the building to which the public has access.

b. Any licensed premises which includes the exterior of a building and/or an outdoor area must be adequately lighted during all business hours.

c. Any licensed premises which includes the exterior of a building must be enclosed by a fence in such a way as to allow access only through the interior of the building.

d. Any licensed premises which is an outdoor area must have its boundaries clearly marked or fenced so as to allow access only through an official gate or entrance. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Private Clubs

Sec. 18-230. License required.

No person shall operate a private club without first having in his or her possession for each place of business as provided by this chapter, unexpired and unrevoked licenses issued by the State of Kansas and the City, and such City license shall be issued and subject to the provisions of Sec. 18-201 through 18-206. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-231. Display of license.

Every licensee shall cause his or her license to be framed and hung in plain view in a conspicuous place on the licensed premises at all times when such license is in force. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-232. Member must be present.

A club license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption of the licensed premises by members, their families and guests accompanying them, and to any reciprocal member as provided by Article 26 of Chapter 41 of Kansas Statutes Annotated. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Article III. Sales

Alcoholic Liquor

Sec. 18-301. Prohibited sales practices.

a. No alcoholic liquor shall be sold by any person at retail within the corporate limits of the City unless such person shall be licensed therefore under the provisions of this chapter and the Liquor Control Act.

b. No person shall sell any alcoholic liquor at retail within the corporate limits of the City:

(1) At or from premises where such commercial activity violates the land use regulations of the City;

(2) At or from premises located within 200 feet of any public or parochial school, college or church; provided, that if any school, college or church shall be established within 200 feet of any retail premises licensed under the provisions of the Liquor Control Act and of this chapter after such premises have been so licensed, then such premises shall be eligible for retail licensing;

(3) At or from premises which do not conform to all applicable building, sanitation and fire prevention regulations of the City;

(4) On Sunday;

(5) On Decoration or Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day; or

(6) Before 9 a.m. or after 11 p.m. on any day when sales are permitted.

c. No person shall knowingly or unknowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any minor; no person 21 years of age or older shall purchase alcoholic liquor from any person for, on behalf of or at the request of any minor.

d. No person shall knowingly sell, give away, dispose of, or 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 drugs, alcoholic liquor or cereal malt beverage.

e. The sale of alcoholic liquor at Memorial Hall may be permitted pursuant to Sec. 14-122 and the sale of alcoholic liquor at the Sports Arena may be permitted pursuant to Sec. 14-123.

f. Violation of this subsection is a misdemeanor.
(*Ord. 2007-15, Adop. 5/01/07; Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88*)

Sec. 18-302. Open saloons prohibited.

It shall be unlawful for any person to own, maintain, operate or conduct, either directly or indirectly, an open saloon within the City. (*Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88*)

Cereal Malt Beverages

Sec. 18-310. Purchase, possession and consumption of cereal malt beverage.

The sale of cereal malt beverages at Memorial Hall may be permitted pursuant to Sec. 14-122 and the sale of cereal malt beverages at the Sports Arena may be permitted pursuant to Sec. 14-123. (*Ord. 2007-15, Adop. 5/01/07; Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88*)

Sec. 18-311. Regulation of certain business practices.

a. No cereal malt beverages may be consumed, sold or otherwise distributed, nor the premises on which a tavern is located be open or in use:

(1) between the hours of 12 midnight and 6 a.m.; or

(2) on Sunday, except in a place of business or special event which is licensed to sell cereal malt beverages for consumption on the premises and which derives not less than 30% of its gross revenues from the sale of food for consumption on the licensed premises;

provided, that nothing herein shall be construed to prohibit an operator of a tavern or place of business from having cereal malt beverages in his or her possession during excluded hours while he or she is in such tavern or place of business.

b. No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverages for consumption on the premises, shall

(1) Offer or serve any free drink to any person;

(2) Offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee;

(3) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price;

(4) Sell, offer to sell or serve any drink to any person on any one day at a price less than that charged to the general public on that day;

(5) Increase the serving size of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;

(6) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of drinks as prizes;

(7) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under paragraphs "b(1)" through "b(6)";

(8) Sell, offer to sell or serve any drink of cereal malt beverage for consumption off the premises; provided, that this paragraph shall not be construed to prohibit the sale of cereal malt beverages in the original unopened container for such consumption; or

(9) Knowingly allow or permit any person to remove a drink of cereal malt beverage or alcoholic liquor from the licensed premises.

c. Every retailer, or employee or agent of a retailer, licensed as a tavern shall verify the age of each and every person who enters the licensed premises. Fraudulent possession or use of an identification card shall not constitute a defense to an administrative or criminal charge that the licensee has permitted a minor to enter to remain upon the licensed premises, sold or distributed cereal malt beverage to a minor or has permitted a minor to possess or consume cereal malt beverage upon the licensed premises.

d. Nothing in this section shall prohibit a retailer from offering free food or entertainment at any time.

e. Violation of any provision of this chapter shall be grounds for suspension or revocation of a license issued pursuant to the provisions of this chapter.

f. Notwithstanding any provision to the contrary in this section, cereal malt beverages may be sold on premises which are licensed pursuant to this article and also licensed as a club by the State, at any time alcoholic liquor is allowed by law to be served thereon.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7248, Adop. 9/27/88; Ord. 7142, Adop. 7/19/88; Ord. 7094, Adop. 6/23/87)

Sec. 18-312. Removal from licensed premises prohibited.

It shall be unlawful for any person to remove any cereal malt beverage from premises licensed for consumption on the premises. *(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)*

Sec. 18-313. Private rooms and closed booths prohibited.

No private rooms or closed booths shall be operated in a tavern or place of business selling cereal malt beverages. This provision shall not apply if the licensed premises is also currently licensed as a club. *(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88; Ord. 7094, Adop. 6/23/87)*

Sec. 18-314. Sale of cereal malt beverage on credit prohibited.

a. No person shall sell or furnish cereal malt beverage at retail to any person on credit; credit card or passbook; on order of a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered.

b. No distributor shall sell or furnish cereal malt to a retailer on credit; on a passbook; on order of a store; in exchange for any goods, wares or merchandise; in payment for any service rendered or to be rendered; or by extension of credit of any kind, type or class.

c. Any person violating the provisions of this section shall be guilty of a misdemeanor.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-315. Regulations applicable to taverns authorized to admit minors 18 years of age or older.

The provisions of this section shall apply to any place of business licensed as a tavern authorized to admit minors 18 years of age or older:

a. Such tavern shall not sell or otherwise distribute any cereal malt beverage by the pitcher or otherwise in a quantity larger than a single drink of cereal malt beverage.

b. No person shall be permitted to purchase more than one drink of cereal malt beverage at a time and no person shall be furnished a second or subsequent drink of cereal malt beverage until the one previously purchased has been completely consumed or otherwise discarded.

c. The licensee shall verify the age of each and every person who enters the licensed premises. Such verification shall be accomplished at the time a person first enters the premises and shall be repeated each and every time such person reenters the premises.

1. No person shall be permitted to enter upon premises licensed as a tavern pursuant to City ordinance unless such person's age is substantiated by means of:

(a) a motor vehicle operator's license bearing a current photograph of the person to which it is issued; or

(b) an identification card bearing a current photograph of the person, issued to such person by the State of Kansas through a driver's license examiner.

2. For the purposes of this subsection, no operator's license or other identification card shall be accepted as proof of age of the person holding the same if such card, or any portion thereof, is so damaged or deteriorated as to be illegible or the photograph unrecognizable, or if such identification card bears any evidence whatever of alteration.

3. Fraudulent possession or use of an identification card shall not constitute a defense to an administrative or criminal charge that the licensee has sold or distributed cereal malt beverage to a minor or permitted a minor to possess or consume cereal malt beverage upon the licensed premises.

d. At the time a person 21 years of age or older enters any such tavern, he or she shall be marked by a stamp or other mark which cannot be readily removed, altered or duplicated. Thereafter, no cereal malt beverage shall be sold or otherwise distributed to any person not bearing such stamp or other mark, nor shall any such person be permitted to possess or consume cereal malt beverage upon the licensed premises; provided, that fraudulent use of any such stamp or other mark by a minor shall not constitute a defense to an administrative or criminal charge that the licensee has sold or distributed cereal malt beverage to a minor or permitted a minor to possess or consume cereal malt beverage upon the licensed premises.

e. Any duty imposed upon a licensee pursuant to this section may be delegated to an employee, agent or other representative of the licensee; provided, that no such delegation shall relieve a licensee of responsibility for nonfeasance, misfeasance or malfeasance in the performance of such duty, nor shall any other provision of City ordinance operate to relieve a licensee of such responsibility.

f. Nothing herein shall be construed to authorize a place of business licensed as a tavern to admit any person under the age of 18.
(Ord. 2007-13, Adop. 4/03/07; Ord. 7248, Adop. 9/27/88)

Sec. 18-316. Prohibitions relating to minors generally.

a. No minor shall enter or remain on the premises of a tavern unless such tavern be licensed to permit the presence of minors 18 years of age or older. Violation of this subsection is a misdemeanor.

b. No licensee, manager, employee or agent shall permit a minor to enter or remain on the premises of a tavern unless such tavern be licensed to permit the presence of minors 18 years of age or older.

c. No licensee, manager, employee or agent shall permit a minor to consume or purchase any cereal malt beverage in or about a place of business.

d. No licensee, manager, employee or agent shall permit a minor to possess cereal malt beverage in or about a place of business; provided, that an employee who is not less than 18 years of age may dispense or sell cereal malt beverage if:

(1) The place of business is licensed only to sell cereal malt beverage at retail in original and unopened containers for consumption off the premises; or

(2) The place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross revenues from the place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7248, Adop. 9/27/88; Ord. 7142, Adop. 7/19/88)

Sec. 18-317. Notice regarding unlawful consumption or possession.

A notice, in substantially the following form, shall be permanently posted on or near all entrances to all places of business licensed for sale of cereal malt beverages for consumption on the premises, and on or near all counters or coolers used by other places of business licensed for sale of cereal malt beverages for off premises consumption, for display and dispensing of cereal malt beverages:

NOTICE

It is unlawful for any person under the age of 21 to purchase cereal malt beverage.

It is unlawful for any person to drink cereal malt beverage or alcoholic liquor or to have in his or her possession any cereal malt beverage or alcoholic liquor except in the original package or container which shall not have been opened:

a. in or upon any highway, road, street, alley, sidewalk, public easement or automobile parking lot, whether such lot be publicly or privately owned, or in or upon any vehicle while in or upon any such place; or

b. in or upon the premises of any cereal malt beverage licensee but outside the serving area of such licensed premises.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Private Clubs

Sec. 18-320. Unlawful acts.

It is unlawful for a licensee to:

a. Employ any person under the age of 21 years in connection with the mixing or dispensing 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 has been convicted of a felony or of any crime involving a morals charge or a crime of moral turpitude in violation of the laws of any municipality, state or of the United States;

c. Employ knowingly or continue in employment any person in connection with the dispensing of alcoholic liquor or mixing of drinks containing alcoholic liquor who has been convicted of a violation of any intoxicating liquor law of any municipality, state or of the United States during the two (2) year period immediately following such conviction;

d. In the case of a club, fail to maintain at the licensed premises a current list of all club members and their residence addresses or refuse to allow the City Attorney or any of his authorized agents or 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 21 years of age to work on the 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 21 years of age or over; or

g. Employ any person under 18 years of age in connection with the serving of alcoholic liquor.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-321. Closing hours.

a. No club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2 a.m. and 9 a.m. on any day.

b. The premises of any club or drinking establishment licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated shall be closed to members and the public between the hours of 2 a.m. and 9 a.m. on any day, except that this subsection shall not apply to restaurants and hotels licensed as drinking establishments.

c. No caterer shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2 a.m. and 6 a.m. on any day at an event catered by such caterer.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-322. Certain sales practices prohibited.

a. No club, drinking establishment, caterer or holder of a temporary permit nor any employee or agent thereof, shall:

(1) Offer or serve any free drink of cereal malt beverage or alcoholic liquor in any form to any person;

(2) Offer or serve to any person a drink of cereal malt beverage or alcoholic liquor at a price that is less than the acquisition cost of the drink to the licensee or permit holder;

(3) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;

(4) Sell, offer to sell or serve any drink of cereal malt beverage or alcoholic liquor to any person at any time at a price less than that charged all other purchasers of drinks on that day;

(5) Increase the volume of alcoholic liquor contained in a drink or the size of a drink or cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;

(6) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of drinks as prizes;

(7) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under paragraphs "a (1)" through "a (6)" of this section;

(8) Sell, offer to sell or serve any drink of alcoholic liquor or cereal malt beverage for consumption off the licensed premises;

(9) Knowingly allow or permit any person to remove a drink of alcoholic liquor from the licensed premises or from the caterer's premises;

b. Nothing in subsection "a" of this section shall be construed to prohibit a club, drinking establishment, caterer or holder of a temporary permit from:

(1) Offering free food or entertainment at any time; or

(2) Selling or delivering wine by the bottle or carafe.

c. Violation of any provision of this section shall be grounds for suspension or revocation of a license, as provided in this chapter.

(Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Article IV. Consumption

Alcoholic Liquor

Sec. 18-401. Consumption in certain places prohibited.

a. It is unlawful for any person to drink or consume or have in his or her possession, except in the original package or container which shall not have been opened, alcoholic liquor, in or upon any highway, road, street, alley, sidewalk, public easement or automobile parking lot, whether such lot be publicly or privately owned, or in or upon any vehicle while in or upon any such place within the corporate limits of the City.

b. No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by this chapter and by the Club and Drinking Establishment Act;

(2) By a person occupying such property as an owner or lessee of any owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor, in violation of K.S.A. 41-803 and amendments thereto, takes place;

(3) In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor, in violation of K.S.A. 41-803 and amendments thereto, takes place;

(4) In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on special occasions to an individual or organization for a private party and if no sale of alcoholic liquor, in violation of K.S.A. 41-803 and amendments thereto, takes place; or

(5) On the premises of a microbrewery or farm winery, if authorized by this chapter and by Kansas statute.

c. No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a governmental entity to others pursuant to the provisions of K.S.A. 12-1740 through 12-1749 and amendments thereto, if such real property is actually being used for hotel or motel purposes incidental thereto;

(2) In any state-owned building or structure and on the surrounding premises, when furnished for and occupied by any state officer or employee as a residence; or

(3) On property, the title to which is held by the City, which has been specifically exempted from the provisions of this section by ordinance; or

(4) At the airport terminal building, in an area specifically designated as a restaurant; or

(5) In or on any other public property, title to which is held by the City, not otherwise exempted, if written permission is granted by the City Manager or his designee, on a case by case basis for a specific event; or

(6) At the Kansas Underground Salt Museum; or

(7) On property for which a valid Outdoor Dining Permit has been issued by the City.

d. The consumption of alcoholic liquor at any place other than those provided in this chapter shall be deemed to be the consumption of alcoholic liquor in a place to which the general public has access.

e. No person shall allow consumption of alcoholic liquor in violation of this chapter on any property owned, leased or otherwise under his or her control. The property upon which any such violation takes place is declared to be a common nuisance subject to abatement to the extent authorized by state law or local ordinance. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88)

Sec. 18-402. Unlawful intoxication in public place.

It shall be unlawful for any person to be under the influence of alcohol or drugs on any public street or highway or in any public place or building within the City to the extent that he poses a danger to himself or others. (Ord. 2007-13, Adop. 4/03/07; Ord. 7142, Adop. 7/19/88))

Cereal Malt Beverages

Sec. 18-410 Possession or Consumption. The consumption of cereal malt beverages at Memorial Hall may be permitted pursuant to Sec. 14-122 and the consumption of cereal malt beverages at the Sports Arena may be permitted pursuant to Sec. 14-123. (Ord. 2007-15, Adop. 5/01/07; Ord. 2007-13, Adop. 4/03/07)

Sec. 18-411. Unlawful possession or use of identification.

a. It shall be unlawful for any minor to:

1. obtain or possess or attempt to obtain or possess any motor vehicle operator's license or other tangible form of identification which was originally issued to or for the purpose of identifying any other person;

2. use or attempt to use any motor vehicle operator's license or other tangible form of identification, originally issued to another person, for the purpose of gaining entry into any place of business licensed as a tavern, or for the purpose of purchasing or otherwise obtaining cereal malt beverage in any form; or

3. use or attempt to use any motor vehicle operator's license or other tangible form of identification, any portion of which has been defaced or obliterated, or altered in any way other than by ordinary wear and tear, for the purpose of gaining entry into any place of business licensed as a tavern, or for the purpose of purchasing or obtaining cereal malt beverage in any form.

b. It shall be unlawful for any person to aid or abet another person in the commission of a violation of subsection "a" of this section.

c. Any licensee and any agent or employee of a licensee may take possession of any motor vehicle operator's license or other identification card used, or attempted to be used, in violation of this section. Any such identification card shall be promptly delivered to the police department by the licensee or other person in possession thereof, together with such information as may be available with respect to the identity of the person making or attempting to make unlawful use of such identification card.
(Ord. 2007-13, Adop. 4/03/07)

Sec. 18-412. Possession on licensed premises prohibited.

No person shall have in his or her possession any alcoholic liquor on the premises where cereal malt beverages are sold, other than in a club or drinking establishment licensed by the Director. (Ord. 2007-13, Adop. 4/03/07)

Sec. 18-413. Possession of open container in certain places prohibited.

It is unlawful for any person to have any cereal malt beverage in his or her possession, except in the original package or container which shall not have been opened, in or upon any highway, road, street, alley, sidewalk, public easement or automobile parking lot, whether such lot be publicly or privately owned, except on such property for which an Outdoor Dining Permit has been issued by the City, or in or upon any vehicle while in or upon any such place, or in or upon the premises of any cereal malt beverage licensee but outside the serving area of such licensed premises, or in Avenue A Park, George Pyle Park, Dillon Nature Center or the Jim P. Martinez Sunflower Trail. (Ord. 2007-13, Adop. 4/03/07)

Private Clubs

Sec. 18-420. Removal from licensed premises.

No person shall remove any drink of alcoholic liquor from premises licensed as a club or drinking establishment or from a caterer's premises, or from premises licensed pursuant to a temporary permit. (Ord. 2007-13, Adop. 4/03/07)

Article V. Manufacture

Sec. 18-501. Manufacturing of alcoholic liquor prohibited; chapter inapplicable in certain cases.

No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this chapter and by the Liquor Control Act, the Club and Drinking Establishment Act or Article 27 of Chapter 41 of the Kansas Statutes Annotated; provided, that nothing contained in this chapter shall prevent:

a. The possession and transportation of alcoholic liquor for the personal use of the possessor, the possessor's family and guests, except that the provisions of this chapter and K.S.A. 41-1103 and amendments thereto shall be applicable to all persons;

b. The making of wine, cider or beer by a person from fruit, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker or the maker's immediate family;

c. Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of the medical or dental profession;

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

e. Any drugstore employing a licensed pharmacist from possessing and using alcoholic liquor in the compounding of prescriptions of duly licensed physicians;

f. The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide religious ceremony conducted by such church; or

g. The sale or possession of flavoring extracts, syrups or medicinal, scientific, culinary or toilet preparations or food products unfit for beverage purposes.
(Ord. 2007-13, Adop. 4/03/07)

Article VI. Fees and Occupation Taxes

Sec. 18-601. License fees.

a. Biennial License Fees

1. Biennial license fees as set out below shall be charged for the specific license for which application is made.

2. Fees for alcoholic liquor licenses (in addition to State of Kansas license fees):

(a)	Class A Club	\$500
(b)	Class B Club	\$500
(c)	Drinking establishment	\$500
(d)	Hotel – entire drinking establishment	\$500

- (e) Caterer \$500
- (f) Drinking establishment/caterer \$500
- (g) Hotel drinking establishment/caterer \$500

3. If the licensee pays the full amount of the license fee as stated above and cannot operate under such license for the entire second year of the license term, a refund shall be made of one-half of the license fee paid by such licensee.

b. Annual License Fees

1. Annual license fees as set out below shall be charged for the specific license for which application is made:

- 2. Fees for cereal malt beverage licenses:
 - (a) Sales at retail for consumption on the premises: \$100*
 - (b) Sales at retail, not for consumption on the premises: \$ 50*
 - (c) Special event license per day (on licensed premises only) Maximum three consecutive days, four times per year: \$ 25*

* Additional state fee assessed and collected by City of Hutchinson (Ord. 2011-15, Adop. 8/16/11; 2007-13, Adop. 4/03/07)

Sec. 18-602. Occupation tax; timing and manner of payment.

a. Any licensee holding a license for any of the purposes mentioned in this section, issued by the Director and located within the corporate limits of the City, shall pay an occupation tax to the City as follows:

- (1) Retailer of alcoholic liquors, including beer containing more than 3.2% alcohol by weight, for consumption off the premises (sales in the original package only): \$ 600
- (2) To manufacture alcohol and spirits: \$5,000
- (3) To manufacture beer, regardless of alcoholic content:

(a)	1 to 100 barrel daily capacity, or any part thereof:	\$ 400
(b)	100 to 150 barrel daily capacity:	\$ 800
(c)	150 to 200 barrel daily capacity:	\$1,400
(d)	200 to 300 barrel daily capacity:	\$2,000
(e)	300 to 400 barrel daily capacity:	\$2,600
(f)	400 to 500 barrel daily capacity:	\$2,800
(g)	500 or more barrel daily capacity:	\$3,200

The words "daily capacity," as used in this section, shall mean the average daily barrel production for the previous twelve (12) months of manufacturing operation; provided, that if no such data exists, the manufacturing licensee shall pay in advance for operation during the first term of the license a fee of \$2,000.

(4)	To manufacture wine:	\$1,000
(5)	Spirits distributor for first and each additional distributing place of business and wholesaling and jobbing spirits:	\$2,000
(6)	Wine distributor for first and each additional distributing place of business and wholesaling and jobbing wine:	\$2,000
(7)	Beer distributor for first and each additional wholesale distributing place of business and wholesaling or jobbing beer and cereal malt beverage:	\$2,000
(8)	Nonbeverage user's license:	
	(a) Class 1	\$ 20
	(b) Class 2	\$ 100
	(c) Class 3	\$ 200
	(d) Class 4	\$ 400
	(e) Class 5	\$1,000

b. A holder of a license for the retail sale of alcoholic liquors by the package in the City, issued by the Director shall present such license when applying to pay the

occupation tax levied in this section, and the tax shall be received and a receipt therefore issued by the city clerk for the period of time covered by the state license.

c. The tax required by this section shall be paid before business is begun under a state license.
(Ord. 201-1, Adop. 1/04/2011; Ord. 2007-13, Adop. 4/03/07)

Sec. 18-603. Display of tax receipt.

Every licensee shall cause the City alcoholic liquor retailer's occupation tax receipt to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises. (Ord. 2007-13, Adop. 4/03/07)

Sec. 18-604. Failure to pay tax.

Any person having a state license for any purpose who shall fail to pay the occupation tax herein levied within the time prescribed or who shall violate any other provision of this article shall upon conviction be fined not more than \$100 for each day's violation; provided, that nothing herein shall be construed to prohibit the City from collecting the occupation tax by any procedure authorized by law. (Ord. 2007-13, Adop. 4/03/07)

Article VII. Penalties

Sec. 18-701. Penalties.

a. Any person violating any provision of this Chapter shall, unless another penalty is specifically provided for such offense, be punished as hereinafter provided:

(1) For a first offense, by a fine of not less than \$35 nor more than \$500, by imprisonment for not more than thirty (30) days, by not more than ten (10) hours of community service, or by any combination thereof, provided that the penalty for possessing, consuming, obtaining, purchasing or attempting to obtain or purchase alcoholic liquor or cereal malt beverages by a person who is at least 18 years of age but under 21 years of age shall be a fine of not less than \$200.

(2) For a second or subsequent offense, by a fine of not less than \$200 nor more than \$1,000, by imprisonment for not more than six (6) months, by not more than forty (40) hours of community service, or by any combination thereof.

(3) In addition to any other penalty, the Court may order the offender to do either or both of the following:

(a) perform forty (40) hours of public service, or

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

(4) Upon a first conviction of a violation of this section, the Court shall order the division of vehicles to suspend the driving privilege of such offender for thirty (30) days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for thirty (30) days whether or not that person has a driver's license.

(5) Upon a second conviction of a violation of this section, the Court shall order the division of vehicles to suspend the driving privilege of such offender for ninety (90) days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for ninety (90) days whether or not that person has a driver's license.

(6) Upon a third or subsequent conviction of a violation of this section, the Court shall order the division of vehicles to suspend the driving privilege of such offender for one (1) year. Upon receipt of the court order, the division shall notify the violation and suspend the driving privileges of the violator for one (1) year whether or not that person has a driver's license.

b. For the purpose of sentencing under this section, entry into or participation in a diversion program shall be deemed to be a prior offense.
(Ord. 2007-13, Adop. 4/03/07; Ord. 2005-33, Adop. 11/15/05; Ord. 7485, Adop. 11/14/95; Ord.. 7142, Adop. 7/19/88)

Article VIII Special Event in Designated Entertainment District

Sec. 18-801. Alcoholic Liquor

a. Alcoholic liquor may be consumed at a Special Event as defined in this Code, held on public streets, alleys, roads, sidewalks or highways when a temporary permit has been issued pursuant to KSA 41-2645 and amendments thereto, for such Special Event.

b. Such Special Event must be approved by resolution by the governing body.

c. The Applicant for the Special Event permit must obtain a temporary alcoholic liquor license from the state of Kansas.

d. No alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways at any such Special Event.

Sec. 18-802. Removal from Boundaries

No person shall remove any alcoholic liquor from inside the boundaries of a Special Event as designated by the governing body. The boundaries of such Special Event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such Special Event.

Sec. 18-803. Possession and Consumption

No person shall possess or consume alcoholic liquor inside the premises licensed as a Special Event that was not sold or provided by either (a) the licensee holding the temporary permit for such Special Event or (b) a drinking establishment identified in Sec. 18-804 which has obtained modification of its alcoholic liquor license from the state of Kansas for the Special Event.

Sec. 18-804. Extension of Premises

a. Drinking establishments that are immediately adjacent to, or located within the licensed premises of a Special Event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premise of the Special Event for the duration of the temporary permit issued for such special event.

b. The written approval issued by the state of Kansas must be posted at the entrance to the establishment.

Sec. 18-805. Liability for Violations

Each licensee selling alcoholic liquor for consumption on the premises of a Special Event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

Sec. 18-806. Temporary Permit

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

Sec. 18-807. Proceeds from Event

All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

Sec. 18-808. Permit Fee

The fee for such permit shall be \$25 a day.

Sec. 18-809. Definitions

For events held in a Designated Entertainment District, the term "Special Event" means a picnic, bazaar, festival or other similar community gathering, which has been approved by the governing body.

Sec. 18-810. Conflicts with City Code

The special provisions of City Code in Special Events in Designated Entertainment District shall take precedence and supersede any provisions of Chapter 18 and Chapter 14 which are in conflict.

Sec. 18-811. Permit Requirements

a. The Applicant for a Special Event permit must obtain a temporary alcoholic liquor license from the state of Kansas and the City pursuant to Chapter 18 of City Code.

b. Applicant must provide a detailed description of the Special Event, including boundaries of district, days of operation, hours of operation, plans for security, and any other information required by the City to allow for adequate review of the proposal.

c. An application for such permit must be made a minimum of sixty (60) days prior to any scheduled Special Event.
(Ord. 2009-26, Adop. 9/01/09)