

CHAPTER III. BEVERAGES

ARTICLE 1. CEREAL MALT BEVERAGES

SECTIONS

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

- (a) **Cereal malt beverage (CMB).** Any fermented but undistilled liquor brewed or made from a malt or a mixture of malt or malt substitute, but shall not include any such liquor which contains more than 3.2% of alcohol by weight.
- (b) **Enhanced cereal malt beverage.** Cereal malt beverage and/or beer containing not more than 6% alcohol by volume when such beer is sold by a retailer licensed under the Kansas cereal malt beverage act.
- (c) **General retailer.** A person who has a license to sell enhanced cereal malt beverages at retail for consumption on the premises.
- (d) **Limited retailer.** A person who has a license to sell enhanced cereal malt beverages at retail only in original and unopened containers and not for consumption on the licensed premises.
- (e) **Person.** Individuals, firms, partnerships, corporation, and associations.
- (f) **Place of business.** Any place at which enhanced cereal malt beverages are sold.
- (g) **Sale at retail and retail sales.** Sales for use or consumption and not for resale in any form.

- (h) **Wholesaler or distributor.** Any individuals, firms, partnerships, corporations and associations which sell or offer for sale any beverage referred to in this Article, to persons, partnerships, corporations and associations authorized by this Article to sell enhanced cereal malt beverages at retail.

(Code 1984)

(Code 2000)

(Ord. 1992C; 05-19-03)

(Ord. 2719C; 02-16-15)

(Ord. 2933C; 03-18-19)

3-102. RETAILER'S LICENSE REQUIRED.

- (a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be sold at retail.
- (b) It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverage in any other manner.

(K.S.A. §41-2702)

(Code 1984)

(Code 2000)

(Ord. 1992C; 05-19-03)

(Ord. 2719C; 02-16-15)

(Ord. 2933C; 03-18-19)

3-103. LICENSE APPLICATION. An application for a license to sell enhanced cereal malt beverages at retail shall be made to the Governing Body in accordance with the provisions of K.S.A. § 41-2702.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

3-104. DISQUALIFICATION. No license shall be issued to:

- (a) A person under 21 years of age.
- (b) A person who has not been a resident in good faith of the state of Kansas for at least one year and a resident of Johnson county for at least six months prior to filing of such application.
- (c) A person who is not a citizen of the United States.
- (d) A person who is not of good character and reputation in the community in which he or she resides.
- (e) A person who, within two years immediately preceding the date of application approval, has been convicted of, released from incarceration for or released from probation or parole for a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.
- (f) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.
- (g) A corporation or limited liability company if any manager, officer or director thereof or any stockholder or any limited liability company member owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residency requirements.
- (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 a licensee.
- (i) A person whose spouse would be ineligible to receive a license for any reason other than citizenship, residence requirements or age, except this shall not apply in determining eligibility for a renewal license.

- (j) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure and such felony or other crime was committed during the time the spouse held a cereal malt beverage license.

(K.S.A. §41-2703)
(Code 1973, 3-204)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

3-105. GRANTING OF LICENSE.

- (a) If the license is granted, the City Clerk shall issue the license which shall display the name of the licensee and the year for which issued.
(b) No license shall be transferred to another licensee.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

3-106. LICENSE POSTING. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

3-107. LICENSE FEE. Each Licensee shall pay the following fees:

- (a) **General Retailer** -- for each place of business selling enhanced cereal malt beverages at retail for consumption on the premises, Two Hundred Dollars (\$200) per year and a Twenty-Five Dollar (\$25) state fee.

- (b) **Limited Retailer** -- for each place of business selling only at retail enhanced cereal malt beverages in original and unopened containers and not for consumption on the licensed premises, Fifty Dollars (\$50) per year and a Twenty-Five Dollar (\$25) state fee.

(Ord. 446 11-19-73)
(Ord. 500; 10-06-75)
(K.S.A. §41-2702)
(Code 1984)
(Code 2000)
(Ord. 1913C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

3-108 NON-TRANSFERABLE AND NONREFUNDABLE.

All license fees issued under this Article shall be nonrefundable and nontransferable. Licenses shall be issued on an annual basis, with the license effective for one year from the date of issuance.

(Ord. 1913C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

3-109. REVOCATION OF LICENSE.

- (a) The Governing Body of the City, upon five (5) days notice to any person licensed under this Article, may revoke or suspend such license for any of the following reasons:
- (1) The drunkenness of the licensee or permitting any intoxicated person to remain at any business licensed under this Article;
 - (2) The sale of enhanced cereal malt beverages to any person under the legal age for consumption of enhanced cereal malt beverage;
 - (3) Permitting any person to mix drinks with materials purchased in any premises licensed under this Article or brought into the premises for this purpose;
 - (4) The sale or possession of, or permitting any person to use or consume, alcoholic liquor, as defined in K.S.A. 41-102, within or upon any premises licensed under this Article; or
 - (5) The licensee has violated any of the provisions of the Kansas Cereal Malt Beverage Act, this Article, or any rules or regulations made by the City.
- (b) The provisions of Subsections (a)(3) and (4) shall not apply if such place of business is also currently licensed as a private club or drinking establishment.

- (c) The Governing Body of the City, upon five (5) days notice to any person licensed under this Article, shall revoke or suspend the license for any one of the following reasons:
- (1) The licensee has fraudulently obtained the license by giving false information in the application for the license;
 - (2) The licensee has become ineligible to obtain a license under this Article;
 - (3) Permitting any gambling in or upon any premises licensed under this Article except as specifically made lawful by the laws of the State of Kansas;
 - (4) The employment of any person under the age of 18 years in dispensing or selling enhanced cereal malt beverages;
 - (5) The employment or continuation in employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor within the preceding two years;
 - (6) The nonpayment of any license fees; or
 - (7) Maintaining or permitting a public nuisance to exist in or upon the licensee's place of business.

(Ord. 996C; 08-17-87)

(Code 1984)

(Code 2000)

(Ord. 1992C; 05-19-03)

(Ord. 2663C; 05-19-14)

(Ord. 2719C; 02-16-15)

(Ord. 2933C; 03-18-19)

3-110. APPEAL. The licensee, within 20 days after the order of the Governing Body revoking or suspending any license, may appeal to the District Court of Johnson County, and the District Court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken under this Section shall not suspend the order of revocation or suspension of the license of any licensee during the pendency of any appeal, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

(K.S.A. § 41-2708)

(Code 1984)

(Code 2000)

(Ord. 1992C; 05-19-03)

(Ord. 2719C; 02-16-15)

3-111.

REGULATIONS.

- (a) Except as provided by Subsection (i) no enhanced cereal malt beverages may be sold:
 - (1) between the hours of 12 midnight and 6 a.m., or
 - (2) on Sunday, except between the hours of 12 noon and 8 p.m. and except in a place of business which is licensed to sell enhanced cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises, or
 - (3) on Easter Sunday.
- (b) No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply if the premises are also currently licensed as a club pursuant to the provisions of the Club and Drinking Establishment Act of the State of Kansas, as amended.
- (c) Each place of business shall be open to the public and to law enforcement officers at all times during business hours or when patrons are on the premises, except that a premise licensed as a club pursuant to the Club and Drinking Establishment Act of the State of Kansas shall be open to law enforcement officers and not to the general public.
- (d) No licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage to possess, consume, or purchase any enhanced cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than 18 years of age may dispense or sell enhanced cereal malt beverage, if
 - (1) the licensee's place of business is licensed only to sell enhanced 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 not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.
- (e) The legal age for consumption of enhanced cereal malt beverage shall mean 21 years of age.
- (f) No person shall have any 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.
- (g) Enhanced cereal malt beverages may be sold on premises which are licensed pursuant to both the acts contained in Article 27 of Chapter 41 of the Kansas Statutes Annotated and the Club and Drinking Establishment Act at any time when alcoholic liquor is allowed by law to be served on the premises.

- (h) The licensee of each premises licensed under this Article shall at all times comply with sanitary health regulations.
- (i) No retailer, or employee or agent of a retailer, licensed to sell enhanced cereal malt beverage for consumption on the licensed premises shall:
 - (1) Offer or serve any free drink to any person;
 - (2) 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;
 - (3) Sell, offer to sell or serve any drink to any person at a price that is less than the acquisition cost of the drink to the licensee;
 - (4) Encourage or permit, on the licensed premises, any game or contest which involves drinking enhanced cereal malt beverages or the awarding of drinks as prizes; or
 - (5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under Subsections (i) (1) through (i) (4) of this Section.
- (j) As used in this Section "drink" means an individual serving of enhanced cereal malt beverages.
- (k) As used in this Section the Club and Drinking Establishment Act shall mean Kansas Statutes Annotated, Chapter 41, Article 26, as amended.
- (l) Violation of this Section is punishable by a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment not exceeding one (1) year, or both.

(K.S.A. § 41-2719)
 (Code 1984)
 (Ord 1476C; 03-20-95)
 (Code 2000)
 (Ord. 1992C; 05-19-03)
 (Ord. 2138C; 11-07-05)
 (Ord. 2719C; 02-16-15)
 (Ord. 2933C; 03-18-19)

3-112. OPEN CONTAINER. – REPEALED

SECTION 3-112 IS HEREBY REPEALED

See Standard Traffic Ordinance, incorporated by Section 14-101 of this Code.

(K.S.A. § 41-2719)
 (Code 1984)
 (Code 2000)
 (Ord. 1992C; 05-19-03)
 (Ord. 2663C; 05-19-14)
 (Ord. 2719C; 02-16-15)

3-113. CONSUMPTION WHILE DRIVING. . – REPEALED

SECTION 3-112 IS HEREBY REPEALED

See Standard Traffic Ordinance, incorporated by Section 14-101 of this Code.

(K.S.A. § 41-2720)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2663C; 05-19-14)
(Ord. 2719C; 02-16-15)

3-114. CONSUMPTION, POSSESSION ON PUBLIC PROPERTY.

- (a) Except as provided in Section 3-115, it shall be unlawful for any person to possess an open container of or to consume any enhanced cereal malt beverage upon any sidewalk, public street, alley or in or upon any other public property within the City, or while inside a vehicle on such public property.

(Ord. 1666C; 03-10-97)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

3-115**EXEMPTIONS**

- (a) The provisions of Section 3-114, shall not apply to the possession or consumption of enhanced cereal malt beverage upon the following property owned or leased by the City subject to the following conditions:
1. The property known and operated as the Ironhorse Golf Club, including the clubhouse and eighteen-hole golf course; provided further, that no person shall possess or consume any enhanced cereal malt beverage at the Ironhorse Golf Club without the approval of the manager or person in charge of said Ironhorse Golf Club. The manager or person in charge of said Ironhorse Golf Club may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverages at Ironhorse Golf Club.
 2. The property owned by the City and known and operated as the Leawood Community Center, including the lower level and courtyard areas of City Hall; provided further, that no person shall possess or consume any enhanced cereal malt beverage at the Leawood Community Center without the approval of the Parks & Recreation Director or person in charge of said Leawood Community Center. The Director or person in charge of said Leawood Community Center may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverage at Leawood Community Center.
 3. The property known and operated as City Park, Ironwoods Park, I-Lan Park or Gezer Park, provided that no person shall possess or consume any enhanced cereal malt beverage at City Park, Ironwoods Park, I-Lan Park or Gezer Park, without the approval of the Parks and Recreation Director or other person in charge of Ironwoods Park. The Director or person in charge of said City Park, Ironwoods Park, I-Lan Park or Gezer Park may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverage at City Park, Ironwoods Park, I-Lan Park or Gezer Park.

4. The property known and operated as the Leawood Justice Center, provided that no person shall possess or consume any enhanced cereal malt beverage at the Leawood Justice Center without the approval of the Chief of Police or other person in charge of the Leawood Justice Center. The Chief or other person in charge of the Justice Center may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverage at the Leawood Justice Center.

(Ord. 1666C; 03-10-97)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2485C; 03-07-11)
(Ord. 2643C; 11-04-13)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

- 3-116. WHOLESALERS AND/OR DISTRIBUTORS.** It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver enhanced cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales.

(K.S.A. § 79-3847)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

- 3-117. SANITARY CONDITIONS.** It shall be unlawful for any licensee to violate any of the statutes of Kansas, or ordinances of the city or rules or orders of the state board of health relating to sanitary or health conditions of the places licensed to sell such cereal malt beverages.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

3-118. PREMISES, ILLUMINATION. It shall be unlawful for any owner, operator, or licensee to operate any place of business licensed for the sale and consumption of cereal malt beverages on the premises without sufficient illumination to measure not less than five foot candles of light in all portions of said place of business measured at a height of 36" above the floor.

(K.S.A. § 41-2704)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

3-119. PENALTY.

- (a) It shall be unlawful for any person to do any of the things or acts forbidden in this Article. It shall be unlawful for any person to fail or refuse to do any of the things or acts commanded to be done by this Article.
- (b) Any person violating any of the provisions of this Article for which another penalty is not specifically provided shall, upon conviction thereof, be fined in any amount not to exceed Five Hundred Dollars (\$500.00), or be imprisoned not to exceed one (1) year, or be both so fined and imprisoned.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)