

ORDINANCE NO. 457
(Declared Invalid through Court System)

REGULATING THE SALE OF LIQUOR BY THE DRINK, LICENSING, LOCATION, HOURS OF OPERATION.

1. General Ordinance Provisions, Section 1. DEFINITIONS.

(a) Alcoholic Liquor means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human being, but shall not include any cereal malt beverage. (b) 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 State temporary permit selling alcoholic liquor in accordance with the terms of such permit.

(c) 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 percent alcohol by weight.

(d) 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 State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

(e) Class B Club 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.

(f) Club means a Class A or Class B club.

(g) Drinking Establishment means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(h) Temporary Permit means a permit, issued in accordance with the laws of the State of Kansas, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public. Section 2. RESTRICTIONS ON LOCATION. (a) No alcoholic liquor shall be sold or served by a person holding a license or permit from the city whose place of business or other premises are located within 200 feet of any church, school, nursing home or library, said distance to be measured from the nearest property line of such church, school, nursing home or library, to the nearest portion of the building occupied by the premises.

(b) The distance location of subsection (a) above shall not apply to a club, drinking establishment, caterer or temporary permit holder when the license or permit applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety. (c) No license or permit shall be issued for the sale of alcoholic liquor if the building or use does not meet the zoning ordinance requirements of the city or conflicts with other city laws, including building and health codes.

(d) No license or permit shall be issued for the sale of alcoholic liquor to any establishment which is connected, attached to, or contained in a private residence or dwelling which allows entrance to the establishment from private living quarters.

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

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

(c) This section shall not apply if the person under the age of 21 years is accompanied by his or her parent or guardian, or if the licensed or permitted premises derives not more than 50 percent of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premises use.

Section 4. CONSUMPTION ON PUBLIC PROPERTY. No person shall drink or consume any alcoholic liquor on city owned public property.

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Section 5. RIGHT TO IMMEDIATE ENTRY AND INSPECTION. The right of immediate entry and inspection at any time of any premises licensed under this act, or of any premises subject to the control of any establishment licensed under this act by any duly authorized officer, agent, or any peace officer shall be a condition on which every license shall be issued, and the application for the acceptance of any license hereunder shall conclusively be deemed to be the consent of the applicant and licensee to such immediate entry and inspection. Such consent shall not be revocable during the term of the license. Refusal of such entry shall be a violation of this ordinance and also grounds for revocation of the license.

Section 6. PENALTY. If the licensee or permit holder has violated any of the provisions of this ordinance, the governing body of the city, upon five days' written notice to a person holding a license or permit to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than 30 days such license or permit and the individual holding the license or permit may be charged in municipal court with a violation of the alcoholic liquor laws of the city and upon conviction shall be punished by

- (a) a fine of not more than \$499, nor less than \$100 or,
- (b) imprisonment in jail for not more than 179 days or,
- (c) both such fine and imprisonment not to exceed (a)

and (b) above. 2. Drinking Establishments

Section 1. LICENSE REQUIRED. It shall be unlawful for any person granted a drinking establishment license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a city license from the city clerk. Section 2. LICENSE FEE. (a) There is hereby levied an annual license fee in the amount of \$250.00 dollars on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.

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

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

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

Section 3. BUSINESS REGULATIONS. (a) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 12 p.m. and 11 a.m. on any day.

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

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

Section 4. PENALTY. If the licensee has violated any of the provisions of this ordinance the governing body of the city, upon five days written notice to the person holding such license to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than 30 days such license and the individual holding the license may be charged in municipal court with a violation of the alcoholic liquor laws of the city and upon conviction shall be punished by

- (a) a fine of not more than \$499 nor less than \$100 or
- (b) imprisonment in jail for not more than 179 days or
- (c) both such fine and imprisonment not to exceed (a)

and (b) above.

3. Private Clubs

Section 1. LICENSE REQUIRED. It shall be unlawful for any person granted a private club license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk.

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Section 2. LICENSE FEE. (a) There is hereby levied an annual license fee on each private club located in the city which has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. The city license fee for a Class A club shall be \$250.00 and the city license fee for a Class B club shall be \$250.00

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

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

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

Section 3. BUSINESS REGULATIONS. (a) No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 11:00 a.m. on any day.

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

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

Section 4. PENALTY. If the licensee has violated any of the provisions of this ordinance, the governing body of the city, upon five days written notice to the person holding such license to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than 30 days such license and the individual holding the license may be charged in municipal court with a violation of the alcoholic liquor laws of the city and upon conviction shall be punished by

(a) a fine of not more than \$499 nor less than \$100 or,

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

(c) both such fine and imprisonment not to exceed (a)

and (b) above.

4. Caterers

Section 1. LICENSES REQUIRED. It shall be unlawful for any person licensed by the State of Kansas as a caterer to sell alcoholic liquor by the drink, to sell or serve any liquor by the drink within the city without obtaining a local caterer's license from the city clerk. Section 2. LICENSE FEE. (a) There is hereby levied an annual license fee in the amount of \$100.00 on each caterer doing business in the city who has a caterer's license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. In addition a city Temporary permit shall be required for each event.

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

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

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

Section 3. BUSINESS REGULATIONS. (a) No caterer licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 11:00 a.m. on any day.

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

Section 4. NOTICE TO CHIEF OF POLICE. Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide written notice to the chief of police at least 5

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working days prior to the event if the event will take place within the city. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving.

Section 5. PENALTY. If the licensee has violated any of the provisions of this ordinance, the governing body of the city may permanently revoke or cause to be suspended for a period of not more than 30 days such license and the individual holding the license may be charged in municipal court with a violation of the alcoholic liquor laws of the city and upon conviction shall be punished by:

- (a) a fine of not more than \$499 nor less than \$100 or
- (b) imprisonment in jail for not more than 179 days or,
- (c) both such fine and imprisonment not to exceed (a) and (b) above.

5. Temporary Permits

Section 1. PERMIT REQUIRED. It shall be unlawful for any person granted a temporary permit by the State of Kansas to sell or serve any alcoholic liquor within the city without first obtaining a local temporary permit from the city clerk. Section 2. PERMIT FEE. (a) There is hereby levied a

temporary permit fee in the amount of \$25.00 per day on each group or individual holding a temporary permit issued by the state director of alcoholic beverage control authorizing sales within the city, which fee shall be paid before the event is begun under the state permit.

(b) Every temporary permit holder shall cause the temporary permit receipt to be placed in plain view on any premises within the city where the holder of the temporary permit is serving or mixing alcoholic liquor for consumption on the premises.

Section 3. CITY TEMPORARY PERMIT. (a) It shall be unlawful for any person to conduct an event under a state issued temporary permit without first applying for a local temporary permit at least 5 days before the event. Written application for the local temporary permit shall be made to the city clerk and shall clearly state:

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

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

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

Section 4. PERMIT REGULATIONS. (a) No temporary permit holder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 11:00 a.m. at any event for which a temporary permit has been issued.

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

Section 5. PENALTY. If the permit holder has violated any of the provisions of this ordinance, the governing body may revoke such temporary permit, and the individual holding the permit may be charged in municipal court with a violation of the alcoholic liquor laws of the city and upon conviction shall be punished by:

- (a) a fine of not more than \$499 nor less then \$100 or
- (b) imprisonment in jail for not more than 179 days or
- (c) both such fine and imprisonment not to exceed (a) and (b) above.

6. Severability

Section 1. If any section, sentence, clause, or phrase

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of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PUBLICATION ONCE IN THE OFFICIAL NEWSPAPER.
PASSED AND APPROVED THIS 3RD DAY OF AUGUST, 1987.

SEAL /s/Rick Schoepf
 Mayor-Acting

/s/Vera R. Hiatt
City Clerk