

CHAPTER III. LICENSES AND BUSINESS REGULATIONS

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ARTICLE 1. CEREAL MALT BEVERAGE RETAILERS

3-101. LICENSE REQUIRED OF RETAILERS.

(a) It shall be unlawful for any person to sell any cereal malt beverage at retail without a license for each place of business where cereal malt beverages are to be sold at retail.

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

3-102. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the Attorney General of the State of Kansas, and shall contain:

(a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;

(b) The particular place for which a license is desired;

(c) The name of the owner of the premises upon which the place of business is located;

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

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

(f) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed and that the same comply with the health code and/or ordinances of the city.

(g) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he or she has inspected the premises to be licensed and that the same comply with the fire code and/or ordinances of the city. The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One (1) copy of such application shall immediately be transmitted to the Chief of Police for investigation of the applicant. It shall be the duty of the Chief of Police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this ordinance. The chief shall report to the City Clerk not later than five (5) working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

3-103. *LICENSE APPLICATION PROCEDURES.*

(a) All applications for a new or renewed cereal malt beverage license shall be submitted to the City Clerk at least ten (10) days in advance of the governing body meeting at which they will be considered.

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

(c) The City Clerk shall provide copies of all applications to the police department, to the fire department, and to the health department, when they are received. The police department shall run a records check on all applicants and the fire department and health department will inspect the premises in accordance with the city fire codes and/or ordinances. The departments will then recommend approval, or disapproval, of applications within five (5) working days of the department's receipt of the application.

(d) The governing body will not consider any application for a new or renewed license that has not been submitted ten (10) days in advance and been reviewed by the above city departments.

(e) An applicant who does not hold a cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

3-104 *LICENSE GRANTED; DENIED.*

(a) The journal of the governing body meeting shall show the action taken on the application.

(b) If the license is granted, the City Clerk shall issue the license which shall show the name of the licensee and the year for which issued.

(c) No license shall be transferred to another licensee.

(d) If the license shall be denied, the license fee shall be immediately returned to the person who has made the application.

- 3-105. LICENSE TO BE POSTED.** Each license shall be posted in a conspicuous place in the place of business for which the license is issued.
- 3-106. LICENSE, DISQUALIFICATION.** No license shall be issued to:
- (a) A person who has not been a resident in good faith of the State of Kansas for at least one (1) year **immediately preceding application** and a resident of Dickinson County at the time of filing of such application.
 - (b) A person who is not a citizen of the United States.
 - (c) A person who is not of good character and reputation in the community in which he or she resides.
 - (d) A person who, within two (2) years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under that influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.
 - (e) **A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.**
 - (f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than twenty-five percent (25%) of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.
 - (g) **A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent (25%) percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more then twenty-five percent (25%) of the stock, of a corporation which; (1) has had a retailer's license revoked under K. S. A. 41-2708 and amendments thereto; or (2) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.**
 - (h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.
 - (i) **A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements or age, except than this Subsection (i) shall not apply in determining eligibility for a renewal license.**
- 3-107. RESTRICTION UPON LOCATION.** No license shall be issued for the sale at retail of any cereal malt beverage on premises which are located in areas not zoned for such purpose.

- 3-108. LICENSE FEE.** The license fees shall be as follows:
- (a) General Retailer. For each place of business selling cereal malt beverages at retail for consumption on the premises, one hundred dollars (\$100.00) per calendar year.
 - (b) Limited Retailer. For each place of business selling only at retail cereal malt beverages in the original and unopened containers and not for consumption on the premises, fifty dollars (\$50.00) per calendar year.
The full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued.
 - (c) Temporary Retailer. For each place of business selling cereal malt beverage at retail for consumption on the premises for a temporary period not exceeding one (1) day, and on not more than four (4) occasions per calendar year, twenty-five dollars (\$25.00) per day.
 - (d) For each Cereal Malt Beverage License issued, a twenty-five dollar (\$25.00) fee shall be collected and forwarded to the Kansas Department of Revenue. This is in addition to the license fee.
- 3-109. SUSPENSION OF LICENSE.** The Chief of Police, upon five (5) days' written notice, shall have the authority to suspend such license for a period not to exceed thirty (30) days, for any violation of the provisions of this chapter or other laws pertaining to cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven (7) days from the date of such order.
- 3-110. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY.** The governing body, upon, five (5) days' written notice to a person holding a license to sell cereal malt beverages, may permanently revoke or cause to be suspended such license for a period of not more than thirty (30) days for any of the following reason:
- (a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;
 - (b) If the licensee has violated any of the provisions of this article or has become ineligible to obtain a license under this article;
 - (c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling cereal malt beverages;
 - (d) The sale of cereal malt beverages to any person under the legal age for consumption;
 - (e) For permitting any gambling in or upon any premises licensed under this article;

(f) For permitting any person to mix drinks with materials purchased in any premises licensed under this article or brought into the premises for this purpose;

(g) For the employment of any person under the age established by the State of Kansas for employment involving dispensing cereal malt beverages;

(h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;

(i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed under this article;

(j) The nonpayment of any license fees;

(k) If the licensee has become ineligible to obtain a license under any alcoholic liquor, private club, or drinking establishment ordinance of the city;

(l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

3-111. SAME; APPEAL. The licensee, within twenty (20) days after the order of the governing body revoking any license, may appeal to the District Court of Dickinson County and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken under this section shall not suspend the order of revocation of the license of any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six (6) months thereafter.

3-112. CHANGE OF LOCATION. If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee of fifty dollars (\$50.00) or one hundred dollars (\$100.00). If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

3-113. WHOLESALERS AND/OR DISTRIBUTORS. It shall be unlawful for any wholesaler and/or distributor, his, her or its agent or employees, to sell and/or deliver cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the State of Kansas authorizing such sales.

3-114. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations:

(a) The place of business licensed and operating under this article shall at all times have a front and rear exit unlocked when open for business.

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

(c) Except as provided by Subsection (d), no cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a. m., or consumed between the hours of 12:00 midnight and 6:00 a. m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverages for consumption on the premises, which derives not less than thirty percent (30%) of its gross receipts from the sale of food for consumption on the licensed premises. The sale at retail of cereal malt beverage in the original package is allowed within the city on Sunday, except Easter, between the hours of 12:00 noon and 8:00 pm. Closing hours for clubs shall conform to K. S. A. 41-2614 and may amendments thereto.

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

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State of Kansas shall be open to the police and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employees of the licensee shall sell or permit the sale of cereal malt beverage to any person under the legal age for consumption.

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

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee shall employ any person who has been judged guilty of a felony.

3-115.

SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in sanitary condition, free from flies, rodents and vermin at all

times. The licensed premises shall have at least one (1) restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one (1) lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee.

3-116. MINORS ON PREMISES.

(a) It shall be unlawful for any person under twenty-one (21) years of age to remain on any premises where the sale of cereal malt beverages is licensed for on-premises consumption.

(b) This section shall not apply if the person under twenty-one (21) years of age is an employee of the licensed establishment, or is accompanied by his or her parent or guardian, or if the licensed establishment derives not more than fifty percent (50%) of its gross receipts in each calendar year from the sale of cereal malt beverages for on-premises consumption.

ARTICLE 2. ALCOHOL LIQUOR RETAILERS

3-201. DEFINITIONS.

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

(c) Cereal malt beverage means any fermented but un-distilled 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 three and two tenths percent (3.2%) 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 guest accompanying them.

(e) Class B Club means a premise 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 the sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public.

3-202. *RESTRICTION ON LOCATION.* 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 the other city laws, including building and health codes.

3-203. *MINORS ON PREMISES.*

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

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

(c) This section shall not apply if the person under the age of twenty-one (21) years of age is accompanied by his or her parent or guardian, or if the licensed or permitted premise derives not less than thirty percent (30%) of its gross receipts in each calendar year from the sales of food and nonalcoholic beverages on such premises.

3-204. *CONSUMPTION ON PUBLIC PROPERTY.* No person shall drink or consume any alcoholic liquor on city owned public property. However, this prohibition shall not apply to the following property: *Community Building, Hilltop Community Center, and all common areas in and around the Herington Lake and Herington Reservoir except the beach and swimming area as posted*

3-205. *DRINKING ESTABLISHMENT 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.

3-206.

DRINKING ESTABLISHMENT LICENSE FEE.

(a) There is hereby levied an annual license fee in the amount of two hundred fifty dollars (\$250.00) 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 site license and within five (5) 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.

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

3-207.

DRINKING ESTABLISHMENT BUSINESS REGULATIONS.

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

(b) 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 beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age.

3-208.

PRIVATE CLUB 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.

3-209.

PRIVATE CLUB 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 (5) days after any renewal of a state license. The city license fee for Class A Club shall be two hundred fifty dollars (\$250.00) and the city license fee for a Class B club shall be two hundred fifty dollars (\$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.

3-210. PRIVATE CLUB BUSINESS REGULATIONS.

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

(b) 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 twenty-one (21) years of age, nor shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under twenty-one (21) years of age.

3-211. CATERER'S LICENSE REQUIRED. It shall be unlawful for any person licensed by the State of Kansas as a caterer to sell alcoholic liquor by the drink, to sell or serve any liquor by the drink within the city without obtaining a local caterer's license from the City Clerk.

3-212. CATERER'S LICENSE FEE.

(a) There is hereby levied an annual license fee in the amount of two hundred fifty dollars (\$250.00) 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 (5) 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 other 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 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.

- 3-213. CATERER'S BUSINESS REGULATIONS.**
(a) No caterer licensed here-under shall allow the serving, mixing or consumption of alcohol liquor between the hours of 2:00 a. m. and 6:00 a. m. on any day.
(b) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age.
- 3-214. CATERER'S 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 a written notice to the Chief of Police at least five (5) 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.
- 3-215. 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 form the City Clerk.
- 3-216. PERMIT FEE.**
(a) There is hereby levied a temporary permit fee in the amount of twenty-five dollars (\$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.
- 3-217. 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 five (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 he police, fire or other municipal services.
(b) Upon presentation of a state temporary permit, payment of the city's temporary permit fee and 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 other ordinances of the city.

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

3-218. 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 6:00 a.m. at any event for which a temporary permit has been issued.

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

3-219. PENALTY. If the licensee or permit holder has violated any of the provisions of this article, the governing body of the city, upon five (5) 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 thirty (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 four hundred ninety-nine dollars (\$499.00); or,

(b) Imprisonment in jail for not more than one hundred seventy-nine (179) days: or,

(c) Both such fine and imprisonment not to exceed (a) and (b) above.

ARTICLE 3. RETAIL LIQUOR SALES FOR CONSUMPTION OFF PREMISES

3-301. LICENSE. No person, firm or corporation shall conduct or pursue in this city the business of manufacturing alcoholic liquors, distributing of alcoholic liquors, package or retailing of alcoholic liquors including beer containing more than three and two-tenths percent (3.2%) alcohol by weight for consumption off premises without first procuring from the City Clerk a license therefor.

3-302. FEE. The license fee shall be in the following amounts:

(a) For the distribution of alcoholic liquors, including beer containing more than three and two-tenths percent (3.2%) alcohol by weight.....\$100.00

(b) For retailers of alcoholic liquors, including beer containing more than three and two-tenths percent (3.2%) of alcohol by weight.....\$200.00

3-303. TERM. The license shall be for one (1) year period commencing and ending with the period covered by the state license.

- 3-304.*****LIMITATIONS.*** None of the provisions of this article shall authorize any person, firm or corporation to engage in the manufacture, distribution or retailing of alcoholic liquors including beer containing more than three and two-tenths percent (3.2%) of alcohol by weight, in the city without having first procured from the State of Kansas a license to engage in the business which license must be presented to the City Clerk of the city at the time the license fee herein provided for is paid: Provided, that the license shall be paid before business is begun under an original state license and within ten (10) days after any renewal of state license.
- 3-305.*****TRANSFER.*** The license shall not be transferable between parties but can be transferred from one location in the city to another: Provided, that in the event of the surrender of a license to the State of Kansas the occupation tax shall be rebated in the same proportion as the state license tax shall be rebated by the State of Kansas.
- 3-306.*****SUNDAY SALES.*** The sale at retail of alcoholic liquor in the original package is allowed within the city on any Sunday, except Easter, between the hours of 12:00 noon and 8:00 pm, and on Memorial Day, Independence Day, and Labor Day.
- 3-307.*****PENALTY.*** Any person, firm or corporation who shall conduct or pursue in the limits of this city any of the occupations hereinbefore referred to and who shall have failed to obtain the license as hereinbefore set forth shall be deemed to do so unlawfully and shall upon conviction thereof be fined not to exceed five hundred dollars (\$500.00).

ARTICLE 4. SOLICITORS AND PEDDLERS

- 3-401.*****DEFINITION.*** The terms “solicitor” or “peddler” shall be construed to mean any individual, whether a resident of the city or not whose business or trade is mainly or principally by traveling either by foot, automobile, or by any other type of conveyance, from place to place or from house to house, and entering without invitation upon private residential property to sell, take or attempt to take orders of sale of goods, wares and merchandise, personal property of any nature whatsoever, or for services to be furnished or performed provided that this definition shall not include any person or persons representing any recognized charitable, education or eleemosynary institution or organization having representatives in the city.
- 3-402.*****APPLICATION.*** Any solicitor or peddler, as defined in 3-401, shall be entitled to a solicitor’s or peddler’s license upon proper

application to the City Clerk with satisfactory evidence of the nature of his agency, relation to or connection with the person, firm, company or corporation represented or served, the nature, kind or character of such service, business or enterprise, the character and reputation of such person for business integrity and responsibility in the performance of contracts for delivery of goods and merchandise or performance of services solicited, and such other information as may be required by 3-403. All such licenses shall expire on June 30 and December 31, respectively, after their issuance.

3-403.

CONTENT OF APPLICATION FORM. Before the issuance of any license authorized by this article, the City Clerk shall be satisfied that the applicant therefor is qualified under this article to receive such license. The City Clerk may require a sworn applications in writing prepared in duplicate on a form to be supplied by the City Clerk which shall, among other things, give the following information:

- (a) Name and description of applicant;
- (b) Permanent home address and full local address of applicant;
- (c) A brief description of the nature of the business to be carried on or the goods to be sold and the length of time such applicant has been engaged in said business;
- (d) If employed, the name and address of the employer, together with credentials establishing such relationship;
- (e) The length of time which business is proposed to be carried on;
- (f) The place where services are to be performed or where the goods or property proposed to be sold or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;
- (g) A photograph of the applicant, taken within ninety (90) days prior to the date of making application, which picture shall be at least (2) inches by two (2) inches showing the head and shoulders of the applicant, in a clear and distinguishing manner; or in lieu thereof, the fingerprints of said applicant may be taken by the Chief of Police and filed with the application;
- (h) The names of at least two (2) reliable owners of the property in the County of Dickinson, who will certify to the applicant's good character and business responsibility of the applicant as will enable the city officers to evaluate properly his character and responsibility;
- (i) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any city ordinance, giving the nature of the offenses, the punishment assessed therefor, if any, and the city and state where conviction occurred.

- 3-404. APPLICATION FEE.** At the time of the filing the application, a license fee of twenty-five dollars (\$25.00) shall be paid to the City Clerk.
- 3-405. INVESTIGATION.** Upon receipt of the above application, the City Clerk shall refer the same to the Chief of Police, who shall cause an investigation of the facts stated therein to be made within not to exceed five (5) days.
If as a result of the investigation, the applicant's character or business responsibility is found to be unsatisfactory, or the facts stated therein to be untrue, the Chief of Police shall endorse on such application his findings and endorse his disapproval of the application and his reasons for the same, and shall return the application to the City Clerk, who then shall notify the applicant that his application is disapproved and that no license will be issued.
If, however, the investigation of such application discloses that the character and business responsibility and the facts stated in his application are satisfactory and true, the Chief of Police shall endorse his findings and approval on the application and return the same to the City Clerk, who shall immediately issue a license to the applicant to engage in the business described in the application. Such license shall be in such form as required by ordinance and shall show the name and address of said licensee, the kind of goods to be sold or services rendered, the date of issuance and the length of time the license shall be operative.
- 3-406. TIME RESTRICTIONS.** It shall be unlawful for any person, firm, partnership, or corporation to conduct or operate a business of peddling or soliciting between the hours of 8:00 P.M. and 10:00 A. M.
- 3-407. SUSPENSION.** Upon complaint and evidence of good cause, the City Manager is authorized to suspend any license, issued under the provisions of this article, until the next meeting of the governing body and the governing body upon a hearing of the matter, with notice to the licensee and affording him an opportunity to be heard, may permanently revoke or cancel such license or terminate the suspension and order a return of the license; provided that good cause, as used herein, shall mean to include any reason for which a license could be refused by the City Clerk in the case of an original application and any act of said licensee contrary to the health, morals, safety or welfare of inhabitants of the city or any act in connection with the business or trade which is unlawful, irregular or fraudulent in nature; provided further that conviction of the licensee by the Municipal Court of the city in any case involving a violation of any ordinance of the city relating to or regulating any business,

trade, calling or profession carried on or pursued in the city shall *ipso facto* revoke any license granted hereunder.

- 3-408. PENALTY.** Any person who shall canvass or solicit in the city contrary to the provisions of this article, or who shall refuse to surrender the license after the same shall have been suspended, revoked or cancelled, or who shall canvass or solicit in the city after his or her license shall have been suspended, revoked or cancelled, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars (\$100.00), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

ARTICLE 5. SEXUALLY ORIENTED BUSINESS REGULATIONS

- 3-501. DEFINITIONS.** For the purpose of this Ordinance, and unless the context otherwise requires, the following words, terms and phrases shall be defined as follows:

(a) *Adult Arcade* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

(b) *Adult Bookstore, Adult Novelty Store, or Adult Video Store* means a commercial establishment which has a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations which are characterized by their emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas;

(2) Instruments, devices or paraphernalia which are marketed or designed for use primarily for stimulation of human genital organs or for sadomasochistic use or abuse of a person or persons.

(c) *Adult Cabaret* means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity; or
(2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(3) Films, motion pictures, videocassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities of specified anatomical areas.

(d) *Adult Motel* means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; and either

(1) Offers a sleeping room for rent for a period of time that is less than 10 hours; or

(2) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

(e) *Adult Motion Picture Theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(f) *Adult theater* means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

(g) *Employee* means an individual working or performing services for any sexually oriented business, including any independent contractor who provides services on behalf of any sexually oriented business to the patrons of such business.

(h) Establish means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented

(3) The addition of any sexually oriented business to any other existing sexually oriented business, to any sexually oriented business;

(4) The relocation of any sexually oriented business.

(i) Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for the sexually oriented business license.

(j) *Nudity or a state of nudity* means the appearance of the human male or female genitals, pubic area, vulva, anus or anal cleft with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the female breast below a horizontal line across the top of the areola at its highest point, or the showing of the covered male genitals in the discernibly turgid state.

(k) Operate or cause to be operated means to cause to function or to put or keep in a state of doing business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner or licensee of the business.

(l) Operator means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be an operator of sexually oriented business whether or not that person is an owner, part owner or licensee of the business.

(m) Person means an individual, proprietorship, general or limited partnership, corporation, Limited Liability Company, association or other legal entity.

(n) Sexually oriented business means an Adult Arcade, Adult Bookstore, Adult Cabaret, Adult Motel or any combination of such businesses.

(o) Specified anatomical areas means:

(1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(2) The appearance of the anus, the cleft of the buttocks, the male or female genitals, or the female breast below a horizontal line across the top of the areola at its highest point; or

(3) A state of dress which fails to opaquely cover the anus, the cleft of the buttocks, the male or female genitals, or a female

breast below a horizontal line across the top of the areola at its highest point.

(p) Specified sexual activities means and includes any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy;

(3) Excretory functions as part of or in connection with any activities set forth in (1) through (2) above.

3-502. LICENSE REQUIRED; EXCEPTION.

(a) Except as otherwise provided below, it shall be unlawful for any person to establish, to operate, to be an operator of, or to cause to be operated any sexually oriented business in the City of Herington, Kansas, without a valid license issued by the City therefore.

(b) Any person desiring to obtain a license shall file an application with the City Clerk. Such application shall include the following:

(1) The name and address of the applicant for the license. If the applicant is a corporation, LLC or partnership all stockholders, members or partners names and addresses must be provided;

(2) The name and address of each person associated with or employed by such business as manager or operator of such business;

(3) The address and location of such business;

(4) The name and address of the owner of the property where such business is located; and

(5) An identification in detail of all sexually oriented business activities being conducted at such location and, if conducted in relation to other business activities for which licensure is not required under this Ordinance, an identification of the portion of portions within such location where such sexually oriented business activities are conducted.

(c) The applicant shall permit the inspection of such location and all portions therein in which such business activities are to be conducted upon not less than five (5) days advance notice by the

City Manager. The City Manager shall cause such inspection to be conducted by such representatives of the City as the City Manager shall deem appropriate, with the purpose of the inspection being to determine the accuracy of the information contained in the application.

(d) Upon notice and a hearing, any license issued under the authority of this Section may be revoked by the Governing Body upon any one of the following findings being made: that any information submitted as to the application therefore was materially false; that sexually oriented business activities have been conducted beyond the scope of the license or beyond the confines of the premises or portion of the premises to which the license applies; or that illegal activity has been conducted or permitted to be conducted in relation to the permitted sexually oriented business activities.

(e) It shall be unlawful for any person to expand the scope or change the character or location of any sexually oriented business activities beyond that permitted in any license issued under the authority of this Section.

3-503. LICENSE FEES. The sexually oriented business license fees shall be as follows:

(a) The annual license fee for each place of business shall be two hundred fifty dollars (\$250.00)

The full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued.

3-504. PROCEDURE. An application for a new or renewed sexually oriented business license shall be submitted to the City Clerk at least ten (10) days in advance of the Governing Body meeting at which the application will be considered. The Governing Body shall not consider any application for a new or renewed license that has not been submitted ten (10) days in advance and been reviewed by the appropriate city departments. The City Clerk shall notify the holder of an existing license thirty (30) days in advance of its expiration. An applicant shall attend the Governing Body meeting when the application for a new license will be considered. The application shall be scheduled for consideration by the Governing Body at the earliest meeting consistent with the application and investigation requirements.

3-505. LICENSE DISQUALIFICATION. No sexually oriented business

license shall be issued to:

(a) A person who has not been a resident in good faith of the State of Kansas for at least one (1) year immediately preceding application, and a resident of Dickinson County for at least six (6) months prior to filing of such application.

(b) A person who is not a citizen of the United States.

(c) A person who is not of good character and reputation in the community.

(d) A Person who within two years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness, driving a motor vehicle while under the influence of intoxicating liquor, or the violation of any other intoxicating liquor law of any state or of the United States.

(e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.

(f) A Corporation, if any manager, officer or director thereof or any stockholder owning in the aggregate more than twenty-five percent (25%) of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.

(g) A corporation, if any manager, officer or director there of, or any stockholder owning the aggregate more than twenty-five (25%) of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than twenty-five percent (25%) of the stock, of a corporation which has had a retailer's license revoked under K.S.A 41-2708 and amendments thereto, or has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.

(i) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements, or age, except that this subsection shall not apply in determining eligibility for a renewal license.

3-506. DETERMINATION. The Governing Body shall determine whether

the application is granted or denied and such decision shall be recorded in the minutes of the meeting. If the license is granted, the City Clerk shall issue the license, which shall show the name of the licensee and the year for which the license is issued. If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

3-507. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations:

(a) The license issued by the city shall be posted in a conspicuous place in the place of business for which the license is issued.

(b) The place of business licensed and operating under this article shall have front and rear exits unlocked during all times while open for business.

(c) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to inspection by public safety and health officers of the city, county, and state.

(d) No license shall employ any person who has been adjudged guilty of a felony.

3-508. MINORS ON PREMISES. It shall be unlawful for any person under eighteen (18) years of age to enter or remain on any premises licensed as a sexually oriented business.

3-509. PENALTY. If a license or permit holder violates any of the provisions of this article, the Governing Body, upon five (5) days written notice to a person holding a license for a sexually oriented business, may permanently revoke or suspend for a period of not more than thirty (30) days such license. In addition, the person holding the license may be charged in Municipal Court with a violation of the laws of the city and, upon conviction, shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in jail for not more than thirty (30) days, or both such fine and imprisonment.

3-510. ADDITIONAL LICENSES. Any business required to have any other state or city license such as a cereal malt beverage license or drinking establishment license, shall be required to obtain and pay for such license in addition to the license required in this ordinance. Failure to obtain other required state or city licenses or to maintain such licenses shall be grounds to revoke the sexually oriented business license.