

## **CHAPTER III: BEVERAGES**

Article

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## ARTICLE 1: GENERAL PROVISIONS

### Section

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### 3-101 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ALCOHOL.** 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.** 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 cereal malt beverage.

**CEREAL MALT BEVERAGE.** 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.

**CLASS A CLUB.** 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, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

**CLASS B CLUB.** 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.** A Class A or Class B club.

**DRINKING ESTABLISHMENT.** Premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

**GENERAL RETAILER.** A person who has a license to sell cereal malt beverages at retail.

**LIMITED RETAILER.** A person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

**PLACE OF BUSINESS.** Any place at which cereal malt beverages, or alcoholic beverages, or both are sold.

**WHOLESALE or DISTRIBUTOR.** Any individuals, firms, co-partnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, co-partnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.

**' 3-102 MINORS ON 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 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 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 derive not more than 30% of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premises consumption.

**' 3-103 CONSUMPTION ON PUBLIC PROPERTY.**

No person shall drink or consume any alcoholic liquor on city-owned public property except when permitted by ' 12-109.  
(K.S.A. 41-719)

**' 3-104 PUBLIC SALE; CONSUMPTION.**

(a) It shall be unlawful for any person to sell, serve or dispense any cereal malt beverage or alcoholic beverage in any public place not licensed to sell, serve or dispense such beverage at such public place within or under the jurisdiction of the city.

(b) For purposes of this section, the term **PUBLIC PLACE** shall include upon any street, public thoroughfare, public parking lot or any privately-owned parking area made available to the public

generally, within any parked or driven motor vehicle situated in any of the aforesaid places or upon any property owned by the state or any governmental subdivision thereof unless such property is leased to others under K.S.A. 12-1740 et seq., if the property is being used for hotel or motel purposes or purposes incidental thereto or is owned or operated by an airport authority created pursuant to K.S.A. Ch. 27.

(K.S.A. 41-719)

**3-105 IDENTIFICATION CARD.**

(a) It shall be unlawful for any person to:

(1) Display, cause or permit to be displayed, or have in possession, any fictitious, fraudulently altered or fraudulently obtained identification card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor;

(2) Display or represent any identification card not issued to such person as being his or her card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor;

(3) Permit any unlawful use of an identification card issued to a person for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor; and

(4) Photograph, photostat, duplicate or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card or display or have in possession any such photograph, photostat, duplicate, reproduction or facsimile for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.

(b) It shall be unlawful for any person to:

(1) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any alcoholic liquor;  
or

(2) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any cereal malt beverage.



## ARTICLE 2: CEREAL MALT BEVERAGES

### Section

3-201	License required of retailers
3-202	Application
3-202A	License application procedures
3-203	License granted; denied
3-204	License to be posted
3-205	License, disqualification
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#### ' 3-201 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.

(K.S.A. 41-2702)

#### ' 3-202 APPLICATION.

(a) 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.

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(b) The application shall be verified, and upon a form prepared by the Attorney General of the state, 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;

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

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

(5) 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 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;

(6) 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 provisions of Ch. VIII of this code; and

(7) Each application for a general retailer=s license must be accompanied by a certificate from the city certifying that it has inspected the premises to be licensed and that the same comply with the provisions of Ch. VII of this code.

(c) 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 copy of such application shall immediately be transmitted 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 or she is qualified as a licensee under the provisions of this chapter. The Chief shall report to the person designated by the city not later than five 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.

**3-202A LICENSE APPLICATION PROCEDURES.**

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

(b) The City Clerk=s office shall notify the applicant of an existing license 30 days in advance of its expiration.



(c) The Clerk=s office shall provide copies of all applications to the Police Department. The Police Department will run a records check on all applicants. The Police Department will then recommend approval, or disapproval, of applications within five 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 days in advance and been reviewed by the above city departments.

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

**3-203 LICENSE GRANTED; DENIED.**

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

(b) If an application is in proper form and discloses the required information to show that the applicant has the legal qualifications to obtain the license and has none of the disqualifications, and the required fee has been paid to the city, the governing body shall grant the application and direct the Mayor and City Clerk to execute the license to which the applicant is entitled and affix thereto the seal of the city.

(c) 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.

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

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

**3-204 LICENSE TO BE POSTED.**

Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

**3-205 LICENSE, DISQUALIFICATION.**

No license shall be issued to:

(a) A person who has not been a resident in good faith of the state for at least one year immediately preceding application and a resident of the county for at least six months prior to filing of such application;

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

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(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 years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or 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 25% of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than nonresidence within the city or county;

(g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 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:

(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 that this division (i) shall not apply in determining eligibility for a renewal license; or

(j) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under the Cereal Malt Beverage Act.  
(K.S.A. 41-2703)

‘ **3-206 RESERVED.**

‘ **3-207 LICENSE FEE.**

(a) The fee which shall be paid to the city for a license to sell cereal malt beverage at retail shall be as follows:

(1) *General retailer.* For each place of business selling cereal malt beverages at retail, per

calendar year, \$50, plus the cost of the State of Kansas stamp;

(2) *General retailers where dancing is permitted.* For each place of business where dancing is permitted, at any time, either for compensation or not, selling cereal malt beverages at retail per calendar year, \$100, plus the cost of the State of Kansas stamp;

(3) *A fraternal or non-profit organization.* For which no seating capacity can be determined, may apply for a general retailer license. The cost for the license for the first 24 hours of utilization shall be \$100 and an additional fee of \$50 shall be charged for each increment of any additional 24-hour periods requested by the fraternal or non-profit organization making application. This license shall be valid for the limited time period as approved by the City Council, and shall state specifically on the application the exact date(s) of utilization and the exact location that cereal malt beverage will be dispensed or sold by the applicant fraternal or non-profit organization; and

(4) *Case lot retailers.* For each place of business selling cereal malt beverages in original and unopened case lots only and not for consumption on the premises, per calendar year, \$40, plus the cost of the State of Kansas stamp.

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

(Ord. 608, adopted 9-4-1996; Ord. 847, FEES adopted 1-18-2017)

**3-208 SUSPENSION OF LICENSE.**

The Chief of Police, upon five days= written notice, shall have the authority to suspend such license for a period not to exceed 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 days from the date of such order.

**3-209 LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY.**

(a) (1) The governing body of the city, upon five days= written notice, to a person holding a license to sell cereal malt beverages may permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

(A) The licensee has violated any provisions of K.S.A. 41-2701 et seq., and amendments thereto, or any rules or regulations of the city;

(B) Drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee=s place of business;

(C) The sale of cereal malt beverages to any person under 21 years of age;

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(D) 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;

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

(F) The licensee has been convicted of a violation of the Beer and Cereal Malt Beverage Keg Registration Act.

(2) The provisions of divisions (a)(1)(D) and (a)(1)(E) above shall not apply if the place of business or premises also are currently licensed as a club or drinking establishment pursuant to the Club and Drinking Establishment Act.

(b) The city, upon five days= notice to the persons holding a license, 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 therefor;

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

(3) The nonpayment of any license fees;

(4) Permitting any gambling in or upon the licensee=s place of business;

(5) The employment of persons under 18 years of age in dispensing or selling cereal malt beverage;

(6) The employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or any violation of the intoxicating liquor laws of this state, another state or the United States; or

(7) There has been a violation of K.S.A. 21-4106 or 21-4107, prior to their repeal or K.S.A. 21-6204, and amendments thereto, (public nuisance) in or upon the licensee=s place of business. (K.S.A. 41-2708)

**' 3-210 SAME; APPEAL.**

The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the District Court of the 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 or suspension during the pendency of such appeal. In case of the revocation of the license of any licensee, no new license shall 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)

‘ **3-211 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, as set by the governing body. 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.

‘ **3-212 WHOLESALERS AND/OR DISTRIBUTORS.**

It shall be unlawful for any wholesaler and/or distributor or his, her or its agents 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 Director of Revenue, State Commission of Revenue and Taxation of the state authorizing such sales.  
(K.S.A. 41-307 to 41-307a)

‘ **3-213 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 division (d) below, no cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:00 midnight and 6:00 a.m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614, and any amendments thereto.

(d) Cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2601 et seq., and licensed as a club by the State Director of Alcoholic Beverage Control.

(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 Director of Alcoholic Beverage Control 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 or to sell or give any cereal malt beverage to an intoxicated person.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of cereal malt beverage to any person under 21 years of age.

(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 or agent or employee of the licensee shall employ any person under 21 years of age in dispensing cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

(l) No licensee, agent or employee of the licensee shall permit the sale of cereal malt beverage on credit.

(Ord. 489, adopted 6-20-1990; Ord. 520, adopted 3-4-1992)

### **3-214 PROHIBITED CONDUCT ON PREMISES.**

The following conduct by a cereal malt beverage licensee, manager or employee of any licensed cereal malt beverage establishment is deemed contrary to public welfare and is prohibited:

(a) Remaining or permitting any person to remain in or upon the premises who exposes to view any portion of the female breasts below the top of the areola or any portion of males=/females= pubic hair, anus, buttocks or genitals;

(b) Permitting any employee on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any other employee or any patron;

(c) Encouraging or permitting any patron on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any employee;

(d) Performing or permitting any person to perform on the licensed premises acts of or acts which simulate:

(1) Sexual intercourse, masturbation, sodomy or any other sexual act which is prohibited by law; or

(2) Touching, caressing or fondling such persons= breasts, buttocks, anus or genitals.

(e) Using or permitting any person to use on the licensed premises, any artificial devices or inanimate objects to depict any of the acts prohibited by division (d) above;

(f) Showing or permitting any person to show on the licensed premises any motion picture, film, photograph, electronic reproduction or other visual reproduction depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy or any sexual act which is prohibited by law;

(2) The touching, caressing or fondling of the buttocks, anus, genitals or the female breasts;  
and

(3) Scenes in which a person displays the buttocks, anus, genitals or the female breasts.

(g) As used in this section, the term **PREMISES** means the premises licensed by the city as a cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

**3-215 SANITARY CONDITIONS REQUIRED.**

All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well-lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all 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.

**3-216 MINORS ON PREMISES.**

(a) It shall be unlawful for any person under 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 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 30% of its gross receipts in each calendar year from the sale of cereal malt

beverages for on-premises consumption.





## **ARTICLE 3: ALCOHOLIC LIQUOR**

### Section

- 3-301 State license required
- 3-302 Occupational tax
- 3-303 Posting of receipt
- 3-304 Hours of sale
- 3-305 Business regulations
- 3-306 Restrictions on location

#### **' 3-301 STATE LICENSE REQUIRED.**

(a) It shall be unlawful for any person to keep for sale, offer for sale or expose for sale or sell any alcoholic liquor as defined by the State Liquor Control Act without first having obtained a state license to do so.

(b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the State Director of Alcoholic Beverage Control shall present such license to the City Clerk when applying to pay the occupation tax levied in ' 3-302 and the tax shall be received and a receipt shall be issued for the period covered by the state license.

#### **' 3-302 OCCUPATIONAL TAX.**

There is hereby levied a biennial occupation tax of \$300 on any person holding a license issued by the State Director of Alcoholic Beverage Control for the retail sale within the city of alcoholic liquors for consumption off the premises. Such tax shall be paid by the retailer to the City Clerk before business is begun under an original state license and shall be paid within five days after any renewal of a state license.

(K.S.A. 41-310)

#### **' 3-303 POSTING OF RECEIPT.**

Every licensee under this article 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.

**' 3-304 HOURS OF SALE.**

No person shall sell at retail any alcoholic liquor:

(a) On any Sunday;

(b) On Decoration Day/Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day;

(c) Before 9:00 a.m. or after 11:00 p.m. on any day when the sale thereof is permitted.  
(K.S.A. 41-712)

**' 3-305 BUSINESS REGULATIONS.**

It shall be unlawful for a retailer of alcoholic liquor to:

(a) Permit any person to mix drinks in or on the licensed premises unless the person is preparing or mixing samples for the purposes of conducting wine, beer or distilled spirit tastings, or any combination thereof, as authorized by K.S.A. 41-308d, and amendments thereto;

(b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;

(c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;

(d) Furnish any entertainment in his or her premises or permit any pinball machine or game of skill or chance to be located in or on the premises;

(e) Have in his or her possession for sale at retail any bottles, cask or other containers containing alcoholic liquor, except in the original package; or

(f) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person under 21 years of age.  
(K.S.A. 41-713)

**' 3-306 RESTRICTIONS ON LOCATION.**

The location of a retail store, microbrewery or farm winery is restricted and shall be regulated by K.S.A. 41-710.  
(1997 Code, ' 3-306)

## ARTICLE 4: PRIVATE CLUBS

### Section

3-401 Business regulations

#### **3-401 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 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.  
(K.S.A. 41-2614)

