ORDINANCE NO. 20175

AN ORDINANCE introduced by City Manager Brent Trout, amending and repealing certain sections of the Topeka Municipal Code Chapters 5.10, 5.55 and 9.15 concerning cereal malt beverage and alcoholic liquor.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 5.10.030, Alcoholic beverages – Cereal malt beverage licenses, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Alcoholic beverages – Cereal malt beverage retailer licenses.

(a) All applications for an off-premises retailer license to sell cereal malt beverages at retail in original and unopened containers and not for consumption on the premises shall be accompanied by a limited retailer license fee of $50.00 per year, which fee shall be in addition to any fee charged by the state of Kansas.

(b) All applications for the sale of cereal malt beverages for consumption on the premises shall be accompanied by a general retailer license fee of $200.00 per year, which fee shall be in addition to any fee charged by the state of Kansas.

(c) In addition to the foregoing license fee any person desiring a cereal malt beverage license for consumption on or off premises shall pay the following administrative fees for inspection of the premises:

- General inspection fee (per hour): $50.00
- Expedited inspection fee with less than 24 hours' notice (per trade hour): $100.00
- Re-inspection: $50 for each trade inspection

Section 2. That section 5.55.010, Required, of The Code of the City of
Ordinance

Topeka, Kansas, is hereby amended to read as follows:

**Definitions; License Required; Exemption.**

(a) “Beer” means beer, as defined by K.S.A. 41-102 and amendments thereto, but containing not more than 6% alcohol by volume.

(b) “Cereal malt beverage” means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729 and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

(c) “Off-premises retailer” means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer in original and unopened containers that is not for consumption on the premises.

(d) “On-premises retailer” means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer for consumption on the premises.

(e) No person shall sell or dispense any cereal malt beverages or beer at retail to the public without first having secured a license for each premises such person desires to operate within the corporate limits of the city as provided in this chapter, and a person having a license to sell cereal malt beverages at retail in original and unopened containers only, and not for consumption on the premises, shall not sell such beverages in any other manner.

(f) Notwithstanding subsection (e), no cereal malt beverage license is required if a person holds a retailer’s license issued pursuant to the Kansas Liquor Control Act to sell, at retail, alcoholic liquors or cereal malt beverages.

Section 3. That section 5.55.020, Initial application, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:
Initial Application.

Any person desiring a license under this chapter for a premises not currently licensed shall make application at the office of the city clerk and accompany the application by the license fee required by TMC 5.55.060, for each premises for which a license is desired. The application shall be verified and upon a form prepared by the attorney general of the state and shall contain:

(a) The name and address of the applicant and the length of time that the applicant has resided in the state.

(b) The particular premises for which a license is desired.

(c) The name of the owner of the property upon which the premises is located.

(d) A sworn statement that the applicant is a citizen of the United States and not less than 21 years of age, and that he has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or alcoholic liquor or intoxicating liquor law of any city, state or of the United States, including laws pertaining to the operation or attempted operation of a motor vehicle while under the influence of intoxicating liquor or drugs.

Section 4. That section 5.55.025, Serving outside the premises, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Serving outside the premises.

An on-premises retailer, as defined at TMC 9.15.010, may serve cereal malt beverages and beer outside of the premises provided (1) the applicant has secured a sidewalk cafe permit and a sidewalk fence permit pursuant to Article II of Chapter 12.10 TMC and (2) serves the cereal malt beverage and beer within the confines of the permits.

Section 5. That section 5.55.040, Application for each location and manager
or agent, of The Code of the City of Topeka, Kansas, is hereby repealed.

**Application for each location and manager or agent.**

A separate application shall be made for each premises for which a license is desired. All managers or agents of any place of business shall make application and secure approval of the city council prior to assuming any duties as such, and if there is any change in managers or agents, the new manager or agent shall likewise make application and secure the approval thereof.

**Section 6.** That section 5.55.050, Reapplication, of The Code of the City of Topeka, Kansas, is hereby repealed.

**Reapplication.**

(a) Any person desiring a general retailer’s license for a place of business which is currently licensed by the city shall make reapplication at the office of the city clerk on or before October 5th of each calendar year and shall accompany the reapplication with the license fee required by TMC 5.55.060 for each premises for which a license is desired. No reapplications shall be accepted after October 5th without prior consent of the city council. The reapplication shall be verified and upon the same form as an application, and shall contain all the requirements of TMC 5.55.020.

(b) Any person desiring a limited retailer’s license for a premises which is currently licensed by the city shall make reapplication at the office of the city clerk on or before May 5th of each calendar year and shall accompany the reapplication with the license fee required by TMC 5.55.060 for each premises for which a license is desired. No reapplication shall be accepted after May 5th without prior consent of the city council. The reapplication shall be certified and upon the same form as an application, and shall contain all the requirements of TMC 5.55.020.

**Section 7.** That section 5.55.060, Fees – Term, of The Code of the City of
Topeka, Kansas, is hereby amended to read as follows:

**Fees – Term.**

(a) The license fees under this chapter shall be as prescribed in TMC 5.10.030.

(b) The term of each general on-premises retailer’s license shall be the calendar year. The term of each limited off-premises retailer’s license shall be the 12-month period beginning July 1st and ending June 30th of each calendar year.

(c) 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 such license for the remainder of the period for which the license is issued.

Section 8. That section 5.55.070, Examination – Approval or disapproval, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Examination - License application review; Approval or disapproval by Governing Body.**

If the application or reapplication is in proper form and accompanied by cash or certified check in the amount of the license fee, the city council governing body shall examine the application or reapplication, and after examination of the application or reapplication and certification as provided in TMC 5.55.100 the city council governing body shall, if the applicant is qualified as provided by law, direct the proper officers of the city city clerk to issue a license to the applicant; provided, that no license shall be issued to:

(a) Residency. A person who is not a resident of Shawnee County and has not been: (i) a resident in good faith of the state for at least one year prior to the date of
making application, and who has not been a resident of the county for at least six months prior to the date of making application; and (ii) a resident of the State of Kansas for at least one year prior to the date of making application.

(b) Character. A person who is not of good character and reputation in the county.

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

(d) Violations\Convictions. A person who within two years immediately preceding the date of making application or reapplication has been convicted of, released from incarceration for or released from probation or parole for a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or the violation of any alcoholic liquor or other intoxicating liquor law of any city, state or of the United States

(e) Partnership. A partnership, unless one of the partners is a resident of the city and unless all members of such partnership shall otherwise be qualified to obtain a license.

(f) Corporation. A corporation, if:

(1) Any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, would be ineligible to receive a license under this subdivision section for any reason other than citizenship or nonresidence; or

(2) Any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, of a corporation which:

(i) Has had a retailer's license revoked under K.S.A. 41-2708 and
amendments thereto; or

(ii) Has been convicted of a violation of the Drinking Establishment Act or the cereal malt beverage laws of this state.

(g) Interest in a corporation with revoked license. A person, partnership, or corporation if any manager, officer, or director, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager, director or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which has:

(1) had a retailer’s license revoked under K.S.A. 41-2708 and amendments thereto; or

(2) been convicted of a violation of the Drinking Establishment Act or the cereal malt beverage laws of Kansas.

(h) Limited liability company. A limited liability company unless the company meets the qualifications for licensure of a corporation, except that only those individuals owning in the aggregate 25% or more of the ownership interest in the company shall be required to meet the qualifications for an individual to obtain a license.

(gj) Ineligible Spouse. (1) A person whose spouse would be ineligible to receive a retailer’s license for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license; or (2) a person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure and such felony or other crime was committed during the time the spouse held a license.

(hj) Manager or Agent. A person whose premises is to be conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of a licensee.
(i) Limited Retailer. A person applying for a license as a limited retailer if not engaged in business in the city.

Section 9. That section 5.55.080, Prohibited zones established, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Prohibited zones established.

(a) No license to sell or serve cereal malt beverages to be consumed on the premises on-premises retailer license shall be issued to any premises to be located within the following described zones unless the premises was so licensed or had a license application or renewal pending on or before March 8, 1983, or a special event retailers’ permit has been granted by the governing body by ordinance pursuant to K.S.A. 41-2703, as amended:

(a1) Within 300 feet of any church building.

(b2) Within 300 feet of any school building or schoolyard.

(e3) Within 200 feet of any establishment licensed by the city to sell or serve cereal malt beverages any on-premises retailer; provided, that the 200-foot limitation shall not apply to a restaurant as defined by K.S.A. 41-2601.

(b) The distances listed in this section should be measured in a straight line from the closest point of the premises sought to be licensed to the closest point of the building housing the cereal malt beverage establishment, church building, school building or schoolyard.

Section 10. That section 5.55.090, Renewal of general retailer’s license in prohibited zones, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Renewal of general-on-premises retailer’s license in prohibited zones.

Any person holding a general retailer’s on-premises retailer license to sell or
serve cereal malt beverages at a location within a prohibited zone established by TMC
5.55.080 shall be permitted to renew such license for the same location; provided, that
such license is and has been continuously maintained by the licensee from and after
March 8, 1983, and so long as the licensee is otherwise qualified under the ordinances
of the city and laws of the state.

Section 11. That section 5.55.100, Inspection approval – Initial, of The Code of
the City of Topeka, Kansas, is hereby amended to read as follows:

Inspection approval – Initial inspection.

(a) Before an initial general or limited retailer's on-premises retailer license or
off-premises retailer license shall be issued for any premises to retail cereal malt
beverages, the premises shall be inspected by the building, electrical, sanitary,
mechanical, plumbing and fire inspectors of the city, and no application shall be
approved by the city council/governing body unless such premises shall conform to the
provisions of this chapter and all laws, including the building, electrical, fire, sanitary
mechanical, and plumbing regulations of the city and the state.

(b) If the premises sought to be licensed under this chapter conform to the
laws and regulations referred to in subsection (a) of this section, the building, electrical,
sanitary, plumbing and fire inspectors shall so certify on the application of the applicant,
and such inspectors shall thereafter make inspections at any time deemed necessary
for the enforcement of the provisions of this chapter, as provided elsewhere. If the
premises does not conform to such laws and regulations, the appropriate inspector shall
deliver written notification specifying the reasons for such nonconformity to the applicant
or an agent at his/the premises.

Section 12. That section 5.55.110, Inspection approval – Subsequent, of The
Code of the City of Topeka, Kansas, is hereby amended to read as follows:
Inspection approval – Subsequent inspection; license renewals.

(a) General on-premises retailers. Before an on-premises retailer’s license shall be reconsidered for approval or renewal, the premises shall be inspected by the plumbing/fire and fire/plumbing inspectors of the city, and no reapplication/license renewal shall be approved by the city council/governing body unless the premises shall be certified by the inspectors as conforming to the provisions of this chapter, all laws and regulations of the city that were in effect at the time of the initial certification for such general retailer’s license, and all contemporary plumbing/fire and fire/plumbing regulations of the city and the state. If the plumbing/fire and fire/plumbing inspectors determine that a premises inspected pursuant to this subsection contains any dangerous or unsanitary conditions which constitute a hazard to safety or health, a written report of such conditions shall be prepared and transmitted to the chief building inspector. The code enforcement/development services director or his authorized representatives/designee who shall require corrective measures and compliance with applicable building, plumbing and electrical/fire codes as a condition for reapproval/renewal of the general retailer’s license.

If the premises conforms to the applicable laws and regulations on reapplication for general retailer’s license, the sanitary and fire inspectors shall so certify on the reapplication of the applicant and provide written notification to the city clerk. If the premises does not conform to the laws and regulations, the appropriate inspector shall deliver written notification to the applicant or an agent at the premises specifying the reasons for noncertification. Such notification of nonconformity shall be delivered at least 30 days prior to the expiration of an existing license.

(b) Limited off-premises retailers. A premises licensed as a limited retailer for cereal malt beverages an off-premises retailer shall not be inspected for compliance
with building, electrical, plumbing, or fire regulations of the city and the state as a
condition to consideration for approval of a reapplication for a limited retailer's license at
such premises renewal of licensure. It shall not be necessary for any inspector to certify
on a reapplication for limited retailer's license that such premises conforms to building,
electrical, plumbing, sanitary or fire regulations of the city and the state. This section
shall not be interpreted as exempting such premises from compliance with building,
electrical, plumbing, sanitary or fire regulations of the city and the state.

Section 13. That section 5.55.120, Inspection approval – Appeals, of The Code
of the City of Topeka, Kansas, is hereby repealed.

Inspection approval – Appeals.

If an application or reapplication for a general retailer's license is not certified as
provided in TMC 5.55.100 and 5.55.110, the applicant may appeal the decision of the
inspector to the city council by filing a written notice of appeal with the office of the city
clerk within 10 days after receiving written notification of nonconformity with the
applicable laws and regulations. Such notice of appeal shall be insufficient unless it
states the grounds for such appeal. The city council shall hear such appeal at a meeting
thereof within 10 days following receipt of the notice of appeal. All interested parties
shall have an opportunity to present evidence and argument. The appellant shall have
the burden of proof. Following presentation of evidence and comment by all interested
parties, the city council shall make a determination as to whether the applicant has
violated the applicable laws and regulations as stated in the written notification of
nonconformance. If the city council decides that the applicant is in violation of such laws
and regulations, the application or reapplication for a license shall be denied.

Section 14. That section 5.55.130, Inspection approval – Extension, of The
Code of the City of Topeka, Kansas, is hereby repealed.
Inspection approval—Extension.

In cases of extreme hardship and upon the showing of good faith and the payment of an extension fee of $25.00, the city council may grant an existing licensee one 30-day extension within which to correct any nonconformity with applicable laws and regulations. No more than one such extension shall be granted.

Section 15. That section 5.55.140, Action taken, of The Code of the City of Topeka, Kansas, is hereby repealed.

Action taken.

The minutes of the city council shall show the action taken and if the license is granted, shall direct the proper officers charged by law to issue licenses for the city to execute the license by order of the city council.

Section 16. That section 5.55.150, Transfer, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows.

Transfer.

The license shall not be transferable to any other person and it shall so state that it is not transferable in addition to showing the dates for which it is issued. Licenses may be transferable from one premises to another upon reapplication and the approval of the city council; provided, that in the case of transfer of the license to a new premises, the licensee shall not be required to pay another cereal malt beverage license fee, but shall pay a transfer fee of $25.00 upon successful completion of an inspection pursuant to TMC 5.55.100.

Section 17. That section 5.55.170, Appeal to district court, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Appeal to district court.

Within 20 days after any order of the city council regarding any license, the
licensee or the police department on behalf of the licenser may appeal to the district court, and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. The decision of the governing body to deny a license may be appealed to the district court pursuant to K.S.A. 60-2101 and amendments thereto. Any appeal taken from an order suspending or revoking any such license shall not suspend the order of suspension or revocation during the pendency of any such appeal. In the 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 behalf for a period of six months thereafter.

Section 18. That section 9.15.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

Unless otherwise defined in this chapter, the terms used in this chapter shall have the same meaning and definitions as defined in K.S.A. Chapter 41 and amendments thereto. As used in this chapter:

“Limited retailer” means a licensee who is licensed to sell cereal malt beverage at retail only in original and unopened containers and not for consumption on the premises.

“Premises” means a self-contained area under the exclusive control or dominion of a licensee. “Premises” shall not include common areas over which a licensee exercises joint control or dominion with other businesses. The requirement of exclusive control or domain of a licensee in this definition shall not apply to Heartland Park Topeka.

“Retailer” means a licensee who is licensed to sell cereal malt beverage at retail for consumption on the licensed premises.
“(a) “Beer” means beer as defined by K.S.A. 41-102 and amendments thereto, but containing not more than 6% alcohol by volume.

(b) “Cereal malt beverage” means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729 and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

(c) “Off-premises retailer” means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer in original and unopened containers that is not for consumption on the premises.

(d) “On-premises retailer” means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer for consumption on the premises.

Section 19. That section 9.15.020, Unlawful possession or consumption of alcoholic liquor or cereal malt beverages – Exception, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Unlawful possession or consumption of alcoholic liquor or cereal malt beverages – Exception.

(a) On Public Roads or Unenclosed Private Property Accessible to Public – Exception. No person shall drink or possess an open container of alcoholic liquor or cereal malt beverage on public streets, alleys, roads, highways or unenclosed private property that is accessible to the general public, including but not limited to parking lots, within the city or inside vehicles while on such places within the city.

(b) Except for consumption of alcoholic liquor or cereal malt beverages inside vehicles, this subsection (a) shall not apply to:

(1) possession or consumption of alcoholic liquor or cereal malt
beverage on public streets, alleys, roads, sidewalks, or highways provided the
governing body has approved a special event pursuant to K.S.A. 41-719 and 41-
2645 and amendments thereto and/or issued a special event retailers’ permit
pursuant to K.S.A. 41-2703 and amendments thereto;
(2) a catered event when the caterer’s licensee has complied with the
requirements of K.S.A. 41-2643 and amendments thereto;
(3) possession or consumption of alcoholic liquor or cereal malt
beverage within a common consumption area established by K.S.A. 41-2659 and
amendments thereto.
(b) Private Property – Exceptions. No person shall drink or consume, or
possess an open container of, alcoholic liquor or cereal malt beverage on private
property, except:
(1) On premises where the sale of liquor by the individual drink is
authorized by the state Club and Drinking Establishment Act;
(2) Upon private property by a person occupying such property as an
owner or lessee of an owner and by the guests of such person, if no charge is
made for the serving or mixing of any drinks containing alcoholic liquor nor for
any substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor
takes place in violation of K.S.A. 41-803 and amendments thereto;
(3) In a lodging room of any hotel, motel or boardinghouse by the
person occupying such room and by the guests of such person, if no charge is
made for the serving or mixing of drinks containing alcoholic liquor nor for any
substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor takes
place in violation of K.S.A. 41-803 and amendments thereto;
(4) In a private dining room of a hotel, motel or restaurant if the dining
room is rented or made available on a special occasion to an individual or organization for a private party, and if no sale of alcoholic liquor takes place in violation of K.S.A. 41-803 and amendments thereto;

(5) On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by the Kansas Liquor Control Act (K.S.A. 41-101 et seq.);

(6) On the premises of an unlicensed business for the patrons or guests of such business provided that the requirements of K.S.A. 41-719 and amendments thereto are met;

(7) Within a common consumption area established pursuant to K.S.A. 41-2659 and amendments thereto;

(8) Complimentary alcoholic liquor or cereal malt beverages at fund raising activities of charitable organizations pursuant to K.S.A. 41-104 and amendments thereto; or

(69) Complimentary alcoholic liquor or cereal malt beverage served on the unlicensed premises of a business by the business owner or agent at an event sponsored by a nonprofit organization promoting the arts and which has been approved by the governing body.

(c) In a Private Room of a Place of Business – Exception. No person shall consume cereal malt beverages in any private room or closed booth in a place of business operating pursuant to K.S.A. Chapter 41, Article 27 (K.S.A. 41-2701 et seq.) unless the licensed premises are also currently licensed as a club pursuant to K.S.A. Chapter 41, Article 26 (K.S.A. 41-2601 et seq.).

(d) On Public or Municipal Property – Exceptions. No person shall drink or consume, or possess an open container of, alcoholic liquor or cereal malt beverage on
public or municipal property, except:

(1) Those premises owned by the city and under the control of the airport authority which have been properly leased to private persons, and properly licensed under applicable state and local laws for the sale and dispensing of alcoholic liquor and cereal malt beverages;

(2) Real property leased by the city to others under the provisions of K.S.A. 12-1740 through 12-1749 inclusive, and amendments thereto, if such property is actually being used for hotel or motel purposes or purposes incidental thereto;

(3) Any state-owned or state-operated building or structure and upon the surrounding premises which are furnished to and occupied by any state officer or employee as a residence;

(4) Cereal malt beverages or alcoholic liquor at the Performing Arts Center of Topeka, Topeka Zoological Park, and Helen Hocker Performing Arts Center, and Heartland Park Topeka;

(5) Specified property, the title of which is vested in the city, as authorized by K.S.A. 41-719 and amendments thereto;

(6) On the premises of any Kansas National Guard regional training center or armory and any building on such premises, as authorized by the regulations of the Adjutant General and approval by the Kansas Military Board;

(7) Cereal malt beverages served outside of the premises of a retailer provided the retailer has secured a sidewalk cafe permit and a sidewalk fence permit has been issued pursuant to Article II of Chapter 12.10 TMC;

(8) On the premises of any land or waters owned or managed by the
Kansas Department of Wildlife, Parks, and Tourism unless prohibited by
regulations adopted by the Secretary of the Kansas Department of Wildlife,
Parks, and Tourism;

(9) In the Kansas State History Museum and the surrounding premises
including buildings on the premises, as authorized by the regulations of the
Kansas State Historical Society; or

(10) On the premises of any state-owned historic site under the
jurisdiction and supervision of the State Historical Society and on the surrounding
premises, including buildings on the premises, as authorized by the rules and
regulations of the Kansas State Historical Society; or

(11) On premises of a common consumption area established pursuant
to K.S.A. 41-2659 and amendments thereto.

Section 20. That section 9.15.050, Possession of alcoholic liquor on premises
licensed to sell cereal malt beverage, of The Code of the City of Topeka, Kansas, is
hereby amended to read as follows:

Possession of alcoholic liquor on premises licensed to sell cereal malt
beverage.

Except for beer, it shall be unlawful for any person to have, possess or consume
any other alcoholic liquor in his possession while in a licensed premises selling cereal
malt beverages, unless the premises is also currently licensed by the state Director of
Alcoholic Beverage Control.

Section 21. That section 9.15.090, Samples, of The Code of the City of Topeka,
Kansas, is hereby amended to read as follows:

Samples.

All wholesalers and distributors selling or delivering any cereal malt beverages
within the city shall, upon demand of the city attorney, an assistant city attorney, or any
law enforcement officer, turn over to the city attorney or assistant city attorney or law
enforcement officer samples of any cereal malt beverages in their possession for the
purpose of testing the alcoholic content of such beverages.

Section 22. That section 9.15.100, Hours of sale of cereal malt beverages, of
The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Hours of sale of cereal malt beverages.**

(a) It shall be unlawful for a retailer or limited retailer, an on-premises retailer or
an off-premises retailer to sell cereal malt beverages or beer or to allow the same to be
consumed:

(1) Before 6:00 a.m. or after 12:00 midnight Monday through Saturday.

(2) Before 12:00 noon or after 8:00 p.m. on Sunday, except in a place
of business which is licensed to sell cereal malt beverages for consumption on
the premises, which place of business derives not less than 30 percent of its
gross receipts from the sale of food for consumption on the business premises.

(3) On Easter.

(b) No person shall be permitted to consume or drink any cereal malt
beverage in or about a premises licensed to sell cereal malt beverages or beer during
the times that sale is prohibited under subsection (a) of this section; provided, however,
that this provision shall not apply if the licensed premises are also currently licensed as
a drinking establishment by the state Director of Alcoholic Beverage Control.

Section 23. That section 9.15.130, Unlawful sales of beer or alcoholic liquor by
a cereal malt beverage licensee, of The Code of the City of Topeka, Kansas, is hereby
amended to read as follows:

**Unlawful sales of beer or alcoholic liquor by an cereal malt beverage**
It shall be unlawful for any cereal malt beverage licensee on-premises or off-premises retailer to sell or dispense within the city any beverages containing more than 3.2 percent of alcohol by weight or any alcoholic liquor, other than beer; provided, that this section shall not apply if the on-premises retailer is also operating under a license issued by the state Director of Alcoholic Beverage Control for a drinking establishment.

Section 24. That section 9.15.150, Condition of sales by limited and general retailers, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Condition of sales by limited and general off-premises and on-premises retailers.

(a) An limited-off-premises retailer shall sell cereal malt beverages and beer:

(1) Only at the premises listed identified on the license application.

(2) Only at retail.

(3) Only in original and unopened containers.

(b) An limited-off-premises retailer shall not:

(1) Sell cereal malt beverages and beer for consumption at the licensed premises.

(2) Permit cereal malt beverages or beer to be consumed at the licensed premises.

(3) Sell cereal malt beverages or beer through curb service or drive-up service.

(c) An general-on-premises retailer shall sell cereal malt beverages and beer:

(1) Only at the premises listed identified on the license application.
(2) Only at retail.

(d) An on-premises retailer shall not sell cereal malt beverages or beer through curb service or drive-up service.

Section 25. That section 9.15.280, Mixing drinks on licensed premises prohibited, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Mixing drinks on licensed premises prohibited.

(a) No retailer of alcoholic liquor shall engage in or permit any person to mix drinks containing alcoholic liquor in or on the licensed premises.

(b) The provisions of subsection (a) shall not apply to the preparation or mixing of 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.

Section 26. That section 9.15.290, State license, city tax required, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

State license, city tax required.

Except for on-premises and off-premises retailers, it shall be unlawful for any person to sell alcoholic liquor in the city without first having obtained from the state Director of Alcoholic Beverage Control a license to so engage in such enterprise and without having paid to the city the occupation tax, as set forth in TMC 9.15.300.

Section 27. That section 9.15.320, Responsibility for violations on property – Abatement, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows.

Responsibility for violations on property – Abatement.

(a) It shall be unlawful for any person to allow consumption of alcoholic liquor in violation of this article on any property owned, leased or otherwise under his such
(b) The property on which the violation of this article takes place shall be deemed to be a common nuisance and as such is subject to abatement as provided for any other common nuisance in TMC 9.45.110 in K.S.A. 41-805 and amendments thereto.

Section 28. That section 9.15.330, Regulations governing state licensee, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Regulations governing state licensee.

It shall be unlawful for any licensee or holder of a temporary permit issued under the state Club and Drinking Establishment Act to:

(a) Employ any person under the age of 21 years in connection with the mixing or dispensing of drinks containing alcoholic liquor; or any person under the age of 18 years in connection with the serving of alcoholic liquor.

(b) Knowingly employ or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been convicted or adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States.

(c) Knowingly employ or continue in employment any person in connection with the serving of alcoholic liquor or the mixing or dispensing of drinks containing alcoholic liquor who has been convicted or adjudged guilty of a violation of any intoxicating liquor law of any city, state or of the United States, or any law of any city, state or the United States pertaining to the operation or attempted operation of a vehicle while under the influence of intoxicating liquor or drugs, during a two-year period immediately following such conviction or adjudged guilty of two or more violations of K.S.A. 21-5607 and amendments thereto, furnishing alcoholic liquor to minors or a similar law of any other state, or of the
United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of this or any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors within the immediately preceding five years. For purposes of this section, participation by a person in a diversionary program involving any such charge described in this section shall not be considered a conviction of such charge.

(d) In the case of a club, failure to maintain at the licensed premises a current list of all club members and their residence addresses, or the refusal to allow the director, any of the director’s authorized agents, city police, or any law enforcement officer to inspect the current list of the members of the club.

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.

(f) Permit any employee of the licensee or permit holder who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee or temporary permit holder at any time when not under the on-premises supervision of either the licensee, temporary permit holder, or any employee who is 21 years of age or over.

(g) Employ any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.

Section 29. That section 9.15.340, Hours of operation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Hours of operation.

(a) No licensee of a club or drinking establishment licensed by the state Director of Alcoholic Beverage Control, except as provided in subsection (b), no public
venue, club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on his premises between the hours of 2:00 a.m. and 9:006:00 a.m. on any day.

(b) A hotel of which the entire premises are licensed as a drinking establishment or as a drinking establishment/caterer may allow at any time the serving, mixing and consumption of alcoholic liquor and cereal malt beverage from a minibar in a guest room by guests registered to stay in such room, and guests of guests registered to stay in such room.

Section 30. That original §§ 5.10.030, 5.55.010, 5.55.020, 5.55.025, 5.55.060 through 5.55.110, 5.55.150, 5.55.170, 9.15.010, 9.15.020, 9.15.050, 9.15.090, 9.15.100, 9.15.130, 9.15.150, 9.15.280, 9.15.290, 9.15.320, 9.15.330 and 9.15.340 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 31. This ordinance shall take effect and be in force from April 1, 2019, and after its passage, approval and publication in the official City newspaper.

Section 32. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 33. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body on March 12, 2019.

CITY OF TOPEKA, KANSAS

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Michelle De La Isla, Mayor

ATTEST:

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Brenda Younger, City Clerk