

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 090721

Amending Chapter 10, Code of Ordinances, by repealing Sections 10-1, Definitions, and 10-106, Extended hours licenses, and enacting in lieu thereof new sections of like number and subject matter which change the definition of a school as well as a convention hotel or motel and change the eligibility requirements of receiving and maintaining a convention trade area 3:00 a.m. closing permit.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 10, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 10-1, Definitions, and 10-106, Extended hours licenses, and enacting in lieu thereof new sections of like number and subject matter, to read as follows:

Sec. 10-1. Definitions.

As used in this chapter:

Alcohol beverage vaporizer means any device which, by means of heat, a vibrating element or any method, is capable of producing a breathable mixture containing any one or more alcoholic beverages to be dispensed for inhalation into the lungs via the nose and/or mouth.

Alcoholic beverages means intoxicating liquor, malt liquor or nonintoxicating beer.

Annual gross sales means the gross sales shown on the prior year's state sales tax receipt or the prior year's convention and tourism tax filings or city occupational license tax receipt for an applicant or licensee.

Board means the liquor control board of review established by the city under this chapter to conduct regulatory hearings in connection with the administration and enforcement of the provisions of chapter 10 of the city's Code of Ordinances.

Caterer means any establishment whose primary business is the preparation of food and drinks for consumption away from the licensed premises. A caterer must derive 50 percent or more of its annual gross sales from the sale of prepared meals and food consumed at other approved premises. For the purposes of determining whether an establishment qualifies as a caterer under the provisions of this chapter and calculating the amount and percentage of annual gross sales from the sale of prepared meals and food, any nonalcoholic components mixed or served in any alcoholic beverage shall be considered to be part of the alcoholic beverage and shall not be considered to be prepared meals and food.

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Church means any building or structure regularly and primarily used as a place of worship by any organized religious society, organization or congregation, regardless of whether or not the building or structure was originally designed and constructed for that purpose.

Closed place means a premises licensed under this chapter where all doors are locked and where no customers are in or about the premises.

Coin-or-currency-operated amusement device means pinball machines, marble machines, music-vending machines, pool tables or machines, coin-operated shuffleboards and any other device operated by the insertion of a coin, currency, disc or other insertion piece, whether or not also manipulated by the operator, and which operate for the amusement of the operator, whether or not by registering a score. It shall not include "slot machines," "claw machines," or other machines prohibited by state law. It shall not include machines or devices used bona fide and solely for the vending of service, food, confections or merchandise.

C.O.L. license means a license for the consumption of alcoholic beverages in or upon a premises which does not possess a license for the sale of alcoholic beverages and where food, beverages or entertainment are sold or provided for compensation as provided in RSMo 311.480.

Concert venue means any establishment used for the presentation of live musical performances, pre-advertised to the public including pre-event tickets sales available through third party ticket vendors, and where total ticket sales exceed \$100,000.00 per year.

Commissioner means the commissioner of revenue of Kansas City, Missouri, or person authorized and designated by the commissioner.

Condominium means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Convention hotel or motel means any hotel or motel containing not less than 100 transient guestrooms, having a meeting room or similar facility with a seating capacity of not less than 50 persons and having a restaurant on the premises.

Customer means any person not an employee who enters or remains upon a licensed premises with actual or implied permission of the licensee or a person who purchases or otherwise partakes of any merchandise, goods, entertainment or other services offered upon the premises.

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Dancer means any person performing a semi-nude dance, or who performs a dance for any customers upon the premises of an establishment that allows semi-nude dancing.

Director unless otherwise described, means the director of neighborhood and community services, or a person designated by the director.

Dwelling means any place that is used regularly or irregularly as a place of repose, sleep, rest or any place containing a bed, cot, divan, couch or any other article of furniture on which an adult person may recline. However, this shall not include any premises used as a hotel, motel, or hotel room.

Eligible consentor means an owner of property in the city which is wholly within or intersected by a specified radius from a proposed premises and shall include the board of parks and recreation commissioners with respect to park property under its jurisdiction but with respect to all other property owned by the city, or property owned by the federal government, the state, and political subdivisions of the state or any parcel of such real estate on which a retail sales-by-drink, C.O.L. or sales-by-package license is situated or any property owned by a person who has any ownership interest or other financial interest in the proposed premises, as determined by the director, the property owner shall not be considered an eligible consentor and the property shall not be included in calculating the number of required consents.

Employee means and includes an agent or servant, and shall be construed to mean every person working for or performing services on behalf of the licensee during actual or scheduled work hours.

High density office building means an office building used exclusively for the administrative functions of business firms, professional groups or societies, or any combination of those organizations, under the conditions of section 80-90 of the Code of Ordinances.

Intoxicating liquor or liquor means alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt or other liquors or combination of liquors, a part of which is spirituous, vinous or fermented, and all preparation or mixtures for beverage purposes containing in excess of 3.2 percent of alcohol by weight.

Licensee means the holder of any licenses issued under the provisions of this chapter.

Location means the property parcel upon which a licensed premises is situated.

Malt liquor means any beer or other malt beverage manufactured from pure hops or pure extract of hops, and pure barley malt or other wholesome grains or cereals and wholesome yeast and pure water, and free from all harmful substances, preservatives and

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adulterants, and having an alcoholic content in excess of 3.2 percent by weight, but not in excess of five percent by weight.

Managing officer means the person(s) designated by the licensee who is in actual management and control of a business licensed under this chapter, and who would be eligible as an individual to receive a license for the sale of alcoholic beverages, and who is a qualified voter of the state.

Microbrewery means a business whose activity is the brewing and selling of beer, with an annual production of 10,000 barrels or less.

Nonintoxicating beer means any beer manufactured from pure hops or pure extract of hops, and pure barley malt or other wholesome grains or cereals, and wholesome yeast and pure water, and free from all harmful substances, preservatives and adulterants, and having an alcoholic content of more than 0.5 percent by volume, and not exceeding 3.2 percent of alcohol by weight.

Original license means any license issued under this chapter on an application for a new license whether or not the proposed premises was previously licensed under this chapter but shall not mean a renewal license.

Original package means any package containing three or more standard bottles or cans of malt liquor or nonintoxicating beer, a package containing 50 milliliters (1.7 ounces) or more of spirituous liquor and a package containing 100 milliliters (2.4 ounces) or more of vinous liquor in the manufacturer's original container. A standard bottle or can is any bottle or can containing 12 ounces or less of malt liquor or nonintoxicating beer.

Permittee means the holder of an employee's permit, issued under the provisions of this chapter.

Person means an individual, partnership, club or association, firm, limited liability company or corporation, unless the context requires a contrary interpretation.

Place of entertainment means any establishment which has occupancy capacity for at least 300 customers, annual gross sales in excess of \$250,000.00, and has been in operation for at least one year.

Premises means the bounds of the enclosure where alcoholic beverages are permitted to be sold, stored or consumed under the authority of this chapter.

Restaurant-bar means any establishment having a restaurant or similar facility on the premises which derives 50 percent or more of its annual gross sales from the sale of prepared meals and food made and consumed on the premises, or which has an annual gross sales of at least \$200,000.00 from the sale of prepared meals and food consumed on the premises. For the purposes of determining whether an establishment qualifies as a restaurant-bar under the provisions of this chapter and calculating the amount and

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percentage of annual gross sales from the sale of prepared meals and food, any nonalcoholic components mixed or served in any alcoholic beverage shall be considered to be part of the alcoholic beverage and shall not be considered to be prepared meals and food.

School means any building which is regularly used as a public or private elementary school, middle school or high school.

Semi-nude dance means any live exhibition, performance or dance by a person or persons in a state of dress in which opaque clothing covers no more than the areola of the female breast, the genitals or pubic region and anus, as well as portions of the body covered by straps or strings supporting that clothing.

Substantial quantities of food means the amount of prepared meals and food wherefrom at least 50 percent of the gross income of an establishment has been derived during the three most recent calendar months preceding. For the purposes of determining whether substantial quantities of prepared meals and food constitute at least 50 percent of the gross income of an establishment under the provisions of this chapter, and calculating the amount and percentage of annual gross income from the sale of prepared meals or food, any nonalcoholic components mixed or served in any alcoholic beverage shall be considered to be part of the alcoholic beverage and shall not be considered to be prepared meals or food.

Tavern means any licensed premises that sells liquor by the drink which derives the majority of its annual gross sales from alcoholic beverages and does not qualify to be categorized as a restaurant-bar, amusement place or place of entertainment as defined in this chapter.

Unit means a physical portion of a condominium designated for separate ownership or occupancy, the boundaries of which described in the declaration which creates the condominium.

Unit owner means a person who owns a condominium unit but does not include a person having an interest in a unit solely as security for an obligation.

Sec. 10-106. Extended hours permits.

(a) *Convention trade area 3:00 a.m. closing permit--Eligibility.*

(1) A convention trade area 3:00 a.m. closing permit, authorized by RSMo 311.174, authorizes the licensee who holds a section 10-102, 10-103, 10-134 or 10-135 sales-by-drink license to remain open between 1:30 am. and 3:00 a.m., if:

a. The applicants business is located within the convention trade area. Pursuant to RSMo 311.174, the city's convention trade area is

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hereby designated as all that territory within the corporate limits of the city; and

- b. The applicant's business is a convention hotel or motel or the applicant's business is not a convention hotel or motel but is located not more than 1.5 drivable miles as measured from the outside walls of a hotel, defined as any structure, or building, under one management, which contains rooms furnished for the accommodation or lodging of guests, with or without meals being so provided, and kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient guests or permanent guests, and having more than 100 bedrooms furnished for the accommodation of such guests, and the applicant's annual gross sales at said business for the year immediately preceding the application for a 3:00 a.m. closing permit equals \$125,000.00 or more; provided, however, that the director may waive the foregoing gross sales requirement for a business located in the downtown economic entertainment district if requested by the applicant and the request is supported by documentation that the business should produce annual gross sales equal to \$125,000.00 or more. If this waiver is granted, the applicant, after 90 days of operation, shall produce proof that the gross sales for said 90 days of operation, when projected on an annualized basis by multiplying the gross sales for the 90 days of operation times four, will be satisfied, and, if not, the 3:00 a.m. closing permit will be canceled by the director without refund. The cancellation shall be appealable to the board in the manner set forth in section 10-62(b) of this chapter. Any convention hotel or motel or business that has a current convention trade area 3:00 a.m. closing permit that does not meet the requirement of having annual gross sales equal to or greater than \$125,000.00 at the time their 3:00 a.m. permit is up for renewal after this ordinance has passed will have one year thereafter to fulfill the \$125,000.00 annual gross sales requirement.
- c. A convention hotel or motel that has a current convention trade area 3:00 a.m. closing permit but has fewer than 100 transient guestrooms or a business that has a current convention trade area 3:00 a.m. closing permit which is located more than 1.5 drivable miles from a convention hotel or motel will be allowed to maintain its convention trade area 3:00 a.m. closing permit as long as all other requirements of this chapter have been met.
- d. The director may report to the city council once every three years to make recommendations on adjusting the annual gross sales requirement.

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- (2) Unless stated otherwise in section 10-215, the applicant shall, within 45 days of the filing of the application, furnish to the director, consent forms signed and notarized from a majority of eligible consenters as defined in this chapter from a minimum of 30 property parcels located in the city as defined by Geographic Information Systems maps based on the North American Datum 1983 Missouri West State Plane Coordinate System, maintained by the public works department of the city, wholly within or intersected by a radius of 500 feet from the proposed premises, as measured from the center of the door for the main entrance to the premises. For any premises that does not either intersect or include the boundaries of a minimum of 30 property parcels within a radius of 500 feet, the radius will be increased by segments of 100 feet not to exceed 1,500 feet until the premises is intersected by or within the boundaries of a minimum of 30 property parcels. The center of the door for the main entrance to the premises shall be determined by the entrance most used by the public frequenting the establishment. The applicant shall furnish to the director with the application, two coordinates expressed in feet, based on the North American Datum 1983 Missouri West State Plane Coordinate System, identifying the center of the door for the main entrance to the premises. If within the initial 45 day period for furnishing consents, an applicant files with the director a written request demonstrating good cause for an extension of time to furnish consents, the director may grant one extension of time for furnishing consents under this section up to an additional 45 days. If an eligible conserter chooses to abstain from giving their consent, they will not be included in the total number of eligible consenters for which the applicant must obtain consents; however, the applicant must furnish a signed and notarized consent form from the property owner indicating that they have chosen to abstain from the consent process. For purposes of this section, a condominium as defined in this chapter shall be considered as a single property parcel entitled to a single consent, which consent shall be validated if signed by the unit owners of a majority of the condominium units. In lieu of a signed consent from an eligible property owner under this section, an applicant may furnish and the director shall accept a signed consent in proper form from a tenant of the property owner under the following conditions:
- a. That the tenancy is for a term not less than one year; and
 - b. That the applicant shall furnish to the director sufficient proof that the applicant has sent a notification to the eligible consenting owner in a form approved by the director, by U.S. certified mail; and
 - c. That the notification shall include the date of application, name and address of the applicant, the name and address of the proposed

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establishment, the type of license or permit applied for, the proposed hours of operation, the proposed type of entertainment, if any, a statement that if the owner does not file an objection with director within 30 days of the date of the certified mailing of the notification, that the director will accept the signed consent of the tenant, the name, address, telephone and facsimile numbers of the director's office and instructions to the property owner for filing an objection to accepting the signed consent of the tenant.

- (3) The director shall provide written notification of the filing of an application for a license or permit under this section to all eligible consenters identified for the application and owners of property parcels located in the city, as defined by geographic information systems maps based on the North American Datum 1983 Missouri West State Plane Coordinate System, maintained by the public works department of the city, wholly within or intersected by a radius of 500 feet from the proposed premises, as measured from the center of the door for the main entrance to the premises. The director shall provide written notification of the filing of an application for a license or permit under this section to all to neighborhood associations registered with the city planning and development department whose boundaries are wholly within or intersected by a radius of 500 feet from the proposed premises, as measured from the center of the door for the main entrance to the premises.
- (4) *Form of consent.* Consents required under the provisions of this section shall be in writing on a form provided by the director and shall contain a statement that the person signing is a bona fide eligible conserter under the provisions of this section. Each signature on a consent shall be verified before a notary public.
- (5) *Package sales.* No retail licensee holding a convention trade area 3:00 a.m. closing permit pursuant to this section, nor employee of the licensee, shall sell, give away, otherwise dispose of or allow the removal from the licensed premises any alcoholic beverages in the original package or suffer the same to be done on or about the licensed premises:
 - a. Between the hours of 1:30 a.m. and 6:00 a.m. Tuesday through Saturday;
 - b. Between the hours of 12:00 midnight Sunday and 6:00 a.m. Monday.
- (6) Notwithstanding the limitations contained in subsection (a)(1)b. herein, a sales by drink establishment licensed under this chapter located in that area bounded by and including the block face frontage of the north side of

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17th Street Terrace, the east side of Woodland Avenue, the south side of 19th Street and the west side of Paseo Boulevard that has annual gross sales of \$125,000.00 or more for the year immediately preceding the application for a 3:00 a.m. closing permit and meets all other requirements herein is eligible for such permit.

(b) *Nonprofit Organization 6:00 a.m. closing permit--Eligibility.*

(1) A nonprofit organization 6:00 a.m. closing permit authorized by RSMo 311.174 authorizes a licensee who holds a section 10-102, 10-103, 10-134 or 10-135 sales-by-drink to remain open between 1:30 a.m. and 6:00 a.m., if:

- a. The applicant is a nonprofit organization exempt from federal income taxes under section 501(C)(7) of the Internal Revenue Code of 1986 as amended; and
- b. The applicant is located in a building designated as a National Historic Landmark by the United States Department of Interior; and
- c. The applicants business is located within the convention trade area. Pursuant to RSMo 311.174, the city's convention trade area is hereby designated as all that territory within the corporate limits of the city.

(2) Unless stated otherwise in section 10-215, the applicant shall, within 45 days of the filing of the application, furnish to the director, consent forms signed and notarized from a majority of eligible consenters as defined in this chapter from a minimum of 30 property parcels located in the city as defined by Geographic Information Systems maps based on the North American Datum 1983 Missouri West State Plane Coordinate System, maintained by the public works department of the city, wholly within or intersected by a radius of 500 feet from the proposed premises, as measured from the center of the door for the main entrance to the premises. For any premises that does not either intersect or include the boundaries of a minimum of 30 property parcels within a radius of 500 feet, the radius will be increased by segments of 100 feet not to exceed 1500 feet until the premises is intersected by or within the boundaries of a minimum of 30 property parcels. The center of the door for the main entrance to the premises shall be determined by the entrance most used by the public frequenting the establishment. The applicant shall furnish to the director with the application, two coordinates expressed in feet, based on the North American Datum 1983 Missouri West State Plane Coordinate System, identifying the center of the door for the main entrance to the premises. If within the initial 45 day period for furnishing consents, an

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applicant files with the director a written request demonstrating good cause for an extension of time to furnish consents, the director may grant one extension of time for furnishing consents under this section up to an additional 45 days. If an eligible consenter chooses to abstain from giving their consent, they will not be included in the total number of eligible consenters for which the applicant must obtain consents, however, the applicant must furnish a signed and notarized consent form from the property owner indicating that they have chosen to abstain from the consent process. For purposes of this section, a condominium as defined in this chapter shall be considered as a single property parcel entitled to a single consent, which consent shall be validated if signed by the unit owners of a majority of the condominium units. In lieu of a signed consent from an eligible property owner under this section, an applicant may furnish and the director shall accept a signed consent in proper form from a tenant of the property owner under the following conditions:

- a. That the tenancy is for a term not less than one year; and
 - b. That the applicant shall furnish to the director sufficient proof that the applicant has sent a notification to the eligible consenting owner in a form approved by the director, by U.S. certified mail; and
 - c. That the notification shall include the date of application, name and address of the applicant, the name and address of the proposed establishment, the type of license or permit applied for, the proposed hours of operation, the proposed type of entertainment, if any, a statement that if the owner does not file an objection with director within 30 days of the date of the certified mailing of the notification, that the director will accept the signed consent of the tenant, the name, address, telephone and facsimile numbers of the director's office and instructions to the property owner for filing an objection to accepting the signed consent of the tenant.
- (3) The director shall provide written notification of the filing of an application for a license or permit under this section to all eligible consenters identified for the application and owners of property parcels located in the city, as defined by geographic information systems maps based on the North American Datum 1983 Missouri West State Plane Coordinate System, maintained by the public works department of the city, wholly within or intersected by a radius of 500 feet from the proposed premises, as measured from the center of the door for the main entrance to the premises. The director shall provide written notification of the filing of an application for a license or permit under this section to all to neighborhood associations registered with the city planning and development department whose boundaries are wholly within or

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intersected by a radius of 500 feet from the proposed premises, as measured from the center of the door for the main entrance to the premises; and

- (4) *Form of consent.* Consents required under the provisions of this section shall be in writing on a form provided by the director and shall contain a statement that the person signing is a bona fide eligible consenter under the provisions of this section. Each signature on a consent shall be verified before a notary public.
- (5) *Package sales.* No retail licensee holding a nonprofit organization 6:00 a.m. closing permit pursuant to this section, nor employee of the licensee, shall sell, give away, otherwise dispose of or allow the removal from the licensed premises any alcoholic beverages in the original package or suffer the same to be done on or about the licensed premises:
 - a. Between the hours of 1:30 a.m. and 6:00 a.m. Tuesday through Saturday;
 - b. Between the hours of 12:00 midnight Sunday and 6:00 a.m. Monday.

Approved as to form and legality:

Kathy Adams
Assistant City Attorney