

SECOND COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 070287

Amending Chapter 10, Code of Ordinances, by repealing Sections 10-1, Definitions, and 10-342. Sales-by-drink premises; minors, and enacting in lieu thereof new sections of like number and subject matter.

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 10-342. Sales-by-drink premises; minors, 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.

All-age Concert means a live musical performance by one or more individuals playing instruments and or vocalists accompanied by live music to which admission tickets are sold to the public and is advertised as a performance which admits persons under the age of 21.

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

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considered to be part of the alcoholic beverage and shall not be considered to be prepared meals and food.

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.

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

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.

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 50 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 allowed to consent to the location of the premises as set forth in this chapter 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, the city, the federal government, the state, and political subdivisions of the state 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 Amusement means any establishment whose primary business is to offer games of skill or sport, such as bowling alleys and golf courses.

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

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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 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, including any outside area regularly used as a play or assembly area, which is regularly used as a public, private or parochial school, elementary school or high school, college, university, professional school, business or secretarial 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.

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. 10-342. Sales-by-drink premises; minors.

No sales-by-drink licensee, nor employee of the licensee, shall permit a person under 21 years of age to enter or remain upon the licensed premises, except that this prohibition shall not apply to:

- (1) A sales-by-drink licensed premises which qualifies as a restaurant-bar as defined by section 10-1, so long as no person is semi-nude or performs semi-nude dance on the premises; or

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- (2) The employment of minors by a sales-by-drink licensee as permitted by section 10-339(b)(1) so long as no person is semi-nude or performs semi-nude dance on the premises; or
- (3) A person between 18 and 21 years of age providing or assisting in providing entertainment upon the licensed premises; or
- (4) A person accompanied by parent or lawful guardian, so long as no person is semi-nude or performs semi-nude dance on the premises; or
- (5) A sales-by-drink licensed premises affiliated with and located in a building principally operated as a museum, during the regular hours of museum operation, so long as no person is semi-nude or performs semi-nude dance on the premises. Nothing contained in this subsection shall authorize a licensee to operate a sales-by-drink premises contrary to the other provisions of this chapter; or
- (6) A sales-by-drink licensed premises meeting the definition of a concert venue, so long as no person is semi-nude or performs semi-nude dance on the premises and all of the following are met:
 - a. A security compliance plan on file with the Director, and
 - b. All persons attending the event are required to be identified by a nontransferable marking or device indicating that they are under the age of 21 and/or 21 and older, and
 - c. Other requirements as determined by the Director as needed to maintain public safety.
- (7) A sales-by-drink licensed premises whose total alcohol is no greater than 50 percent of total gross sales for the establishment, such as golf courses, bowling alleys, and theaters, so long as no person is semi-nude or performs semi-nude on the premises.

Approved as to form and legality:

Kathy Adams
Assistant City Attorney