

(Published in the Topeka Metro News June 11, 2012)

ORDINANCE NO. 19738

AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager, concerning cereal malt beverages, amending City of Topeka Code § 9.15.020 and specifically repealing said original section as well as creating new § 5.55.025.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 5.55.025, which said section reads as follows:

Serving outside the premises.

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

Section 2. That section 9.15.020, Unlawful possession or consumption of alcoholic liquor or cereal malt beverages, 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.

(a) On Public Roads or Unenclosed Private Property Accessible to Public. No person shall drink, or have in his possession in an open container, any 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.

29 (b) Private Property – Exceptions. No person shall drink or consume, or have
30 in his possession in an open container, any alcoholic liquor or cereal malt beverage on
31 private property, except:

32 (1) On premises where the sale of liquor by the individual drink is
33 authorized by the state Club and Drinking Establishment Act by issuance of a
34 license by the state Director of Alcoholic Beverage Control;

35 (2) Upon private property by a person occupying such property as an
36 owner or lessee of an owner and by the guests of such person, if no charge is
37 made for the serving or mixing of any drinks containing alcoholic liquor nor for
38 any substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor
39 takes place in violation of K.S.A. 41-803 and amendments thereto;

40 (3) In a lodging room of any hotel, motel or boardinghouse by the
41 person occupying such room and by the guests of such person, if no charge is
42 made for the serving or mixing of drinks containing alcoholic liquor nor for any
43 substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor takes
44 place in violation of K.S.A. 41-803 and amendments thereto;

45 (4) In a private dining room of a hotel, motel or restaurant if the dining
46 room is rented or made available on a special occasion to an individual or
47 organization for a private party, and if no sale of alcoholic liquor takes place in
48 violation of K.S.A. 41-803 and amendments thereto; or

49 (5) On the premises of a microbrewery or farm winery, if authorized by
50 the Kansas Liquor Control Act (K.S.A. 41-101 et seq.) by issuance of a license by
51 the state Director of Alcoholic Beverage Control.

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

57 (d) On Public or Municipal Property – Exceptions. No person shall drink or
58 consume, or have in his possession in an open container, any alcoholic liquor or cereal
59 malt beverage on public or municipal property, except:

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

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

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

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

(5) Specified property designated as authorized by K.S.A. 41-719(d);
or

(6) The National Guard Armory, or

(7) Cereal malt beverages served outside of the premises of a retailer
provided the retailer has secured both a sidewalk café permit and a sidewalk
fence permit pursuant to Article II of Chapter 12.10.

Section 3. That original § 9.15.020 of The Code of the City of Topeka, Kansas,
is hereby specifically repealed.

Section 4. This ordinance shall take effect and be in force from and after its
passage, approval and publication in the official City newspaper.

Section 5. This ordinance shall supersede all ordinances, resolutions or rules,
or portions thereof, which are in conflict with the provisions of this ordinance.

Section 6. 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 City Council on June 5, 2012.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk