

Chapter 11.48
INTOXICATING LIQUOR

Sections:

- 11.48.010 Furnishing Intoxicant to a Minor. (Repealed)
- 11.48.020 Minors Accepting Alcoholic Liquor. (Repealed)
- 11.48.030 Public Intoxication. (Repealed)
- 11.48.040 Transportation of Liquor or Cereal Malt Beverages in Open Containers.
(Repealed. See 12.04)
- 11.48.045 Consumption of Cereal Malt Beverages While Driving, Prohibited. (Repealed.
See 12.04)
- 11.48.050 Violation-Penalties. (Repealed)
- 11.48.100 Definitions and Identification Standards.
- 11.48.110 Persons under 21 Years of Age - Possession, Consumption and Receiving
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- 11.48.120 Furnishing Intoxicating Liquor to Persons under the Age of 21.
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- 11.48.140 Furnishing Alcoholic Liquor to Persons under 21. (Repealed)
- 11.48.150 Furnishing Intoxicating Liquor to Incapacitated Persons.
- 11.48.155 Alcohol Without Liquid Prohibition.
- 11.48.160 Intoxicating Liquor in Public Places - Unlawful Acts.
- 11.48.162 Prohibited Hours.
- 11.48.165 Penalty.

11.48.010 Furnishing Intoxicants to a Minor.

Repealed.

(History: Ord. POC-1321 §9, 85; POC-1146 §1, 81; POC-625 §24, 72)

11.48.020 Minors Accepting Alcoholic Liquor.

Repealed.

(History: Ord. POC-1321 §9, 85; POC-625 §82, 72)

11.48.030 Public Intoxication.

Repealed.

(History: Ord. POC-1146 §2, 81; DIP-701)

11.48.040 Transportation of Liquor or Cereal Malt Beverages in Open Containers.

Repealed. See 12.04.

(History: Ord. REP-1191 §1, 82; POC-1146 §3, 81; POC-625 §81, 72)

11.48.045 Consumption of Cereal Malt Beverages While Driving, Prohibited.

Repealed. See 12.04.

(History: Ord. POC-1321 §9, 85; REP-1191 §1, 82; POC-1146 §4, 81)

11.48.050 Violation-Penalties.

Repealed.

(History: Ord. POC-1321 §9, 85; DIP-701 §2, 72)

11.48.100 Definitions and Identification Standards.

- A. "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.
- B. "Alcoholic liquor" means 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 beer or cereal malt beverage containing not more than 3.2% alcohol by weight.
- C. "Beer," when its meaning is not enlarged, modified, or limited by other words, means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
- D. "Cereal malt beverage" means 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 or less than 0.5% alcohol by volume.
- E. "Intoxicating Liquors" as used in this chapter shall mean any alcoholic liquor, beer, cereal malt beverage, non-alcoholic malt beverage, spirit or wine as defined herein.
- F. "Legal age" for consumption of intoxicating liquor means 21 years of age.
- G. "Non-alcoholic malt beverage" means a beverage containing less than 0.5% alcohol by volume obtained by alcohol fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
- H. "Person" includes individuals, firms, copartnerships, corporations and associations.
- I. "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.
- J. "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

(History: Ord. POC-1655 §1, 90; POC-1631 §1, 90; POC-1596 §1, 89; POC-1459 §1, 87; POC-1381 §6, 86; POC-1321 §1, 85)

11.48.110 Persons under 21 Years of Age - Possession, Consumption and Receiving Intoxicating Liquor - Prohibited.

- A. No person under the age of 21 shall possess, consume, obtain, purchase or attempt to obtain or purchase any intoxicating liquor except as authorized by law.
- B. This section shall not apply to the possession and consumption of cereal malt beverage by a person under the age of 21 when the possession and consumption are permitted and supervised and the beverage is furnished by the person's parent or legal guardian.
- C. Provided further, this section shall not prohibit any person 18 or over from dispensing or selling intoxicating liquor at establishments as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 or 41-2727 and amendments thereto and subject to any rules and regulations adopted pursuant to such statutes.
- D. Any person who is convicted of a violation of this section or diverted in lieu of further criminal proceedings shall be required to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee for such evaluation.
- E. Violations of this section shall be punishable by a fine of not less than \$200 and not more than \$500. In addition, the Court may assess a jail sentence of not more than thirty days.
- F. In addition to any other penalty provided for a violation of this section,
 - (1) The court may order the offender to do either or both of the following:
 - (a) perform 40 hours of public service; or
 - (b) attend and satisfactorily complete a suitable education or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; and
 - (2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privileges of such offender for 30 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not the person has a driver's license.
 - (3) Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privileges of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not the person has a driver's license.
 - (4) Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privileges of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not the person has a driver's license.

- G. A law enforcement officer may request a person under 21 years of age to submit to a preliminary screening test of the person's breath to determine if alcohol has been consumed by such person if the officer has reasonable grounds to believe that the person has alcohol in the person's body except that, if the officer has reasonable grounds to believe the person has been operating or attempting to operate a vehicle under the influence of alcohol, the provisions of K.S.A. 8-1012, and amendments thereto, shall apply. No waiting period shall apply to the use of a preliminary breath test under this subsection. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether to charge a violation of this section. A law enforcement officer may charge a person based in whole or in part upon the results of a preliminary screening test. Such results or a refusal to submit to a preliminary breath test shall be admissible in court in any criminal action, but are not per se proof that the person has violated this section. The person may present to the court evidence to establish the positive preliminary screening test was not the result of a violation of this section.

(History: Ord. POC-2751 §1, 2008; POC-2500 §1, 2004; POC-2311 §1, 2001; POC-2200 §1, 99; POC-1631 §2, 90; POC-1597 §1, 89; POC-1459 §2, 87; POC-1321 §2, 85; POC-625; POC-598) [Prior source of law: 5.12.120]

11.48.120 Furnishing Intoxicating Liquor to Persons under the Age of 21.

- A. Furnishing intoxicating liquor to a minor is buying for or selling, giving or furnishing, whether directly or indirectly, any intoxicating liquor to any person under the legal age for consumption of intoxicating liquor.
- B. This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child or ward's parent or legal guardian.
- C. It shall be a defense to a prosecution under this section if:
1. the defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof;
 2. the defendant sold the intoxicating liquor to the person with reasonable cause to believe that such person was of legal age for consumption of intoxicating liquor; and
 3. to purchase the intoxicating liquor, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the minor and purporting to establish that such person was of legal age for consumption of intoxicating liquor.
- D. Violation of this section shall be punishable by a fine of not less than \$200 and not more than \$500. In addition, the Court may assess a jail sentence of not more than thirty days.

(History: KSA 21-3610a; Ord. POC-2500 §2, 2004; POC-2200 §2, 99; POC-1801 §16, 93; POC-1631 §3, 90; POC-1459 §3, 87; POC-1321 §3, 85; CMB-1145 §5, 81; POC-625 §24; POC-598 §24; CMB-SM-179)

11.48.125 Unlawfully Hosting Minors.

- A. Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is intentionally or recklessly permitting a person's residence or any land, building, structure, or room owned, occupied or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor.
- B. Violation of this Section shall be a class A violation, provided that the minimum fine imposed shall be not less than \$1,000. If the court sentences the offender to perform community or public service work as a condition of probation, as described in O.P.M.C. Section 2.33.294(e)(10), the court shall consider ordering the offender to serve the community or public service at an alcohol treatment facility.

(History: Ord. POC-2821 §3, 2009; POC-2665 §3, 2007; POC-2620 §10, 2006; POC-2500 §3, 2004)

11.48.130 Persons Under 21 - Alcoholic Liquor-Prohibitions.

Repealed.

(History: Ord. POC-1631 §8, 90; POC-1451 §1, 87; POC-1321 §4, 85; POC-598 §81, 70)

11.48.140 Furnishing Alcoholic Liquor to Persons under 21.

Repealed.

(History: Ord. POC-1631 §8, 90; POC- 1321 §5, 85; POC-625 §24; POC-24)

11.48.150 Furnishing Intoxicating Liquor to Incapacitated Persons.

No person shall knowingly sell, give away, furnish, dispose of, procure, exchange or deliver or permit the selling, giving away, furnishing, disposing of or procuring of any intoxicating liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of drugs or intoxicating liquors.

(History: KSA 41-715; Ord. POC-1631 §5, 90; POC-1321 §6, 85)

11.48.155 Alcohol Without Liquid Prohibition.

- A. It shall be unlawful for any person to:
 - 1. Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or
 - 2. Purchase, sell or offer for sale an alcohol without liquid machine.
- B. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.
- C. As used in this section, "alcohol without liquid machine" means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

(History: Ord. POC-2565 §1, 2005)

11.48.160 Intoxicating Liquor in Public Places - Unlawful Acts.

It is unlawful for any person to sell, serve, dispense, drink or consume any intoxicating liquor in or upon any public street, road, highway, avenue, alley or sidewalk, public way, public or private parking lot, or upon any public property, or within any vehicle in or upon any such place. In addition, it is unlawful for any person to possess in any such place, any open container of intoxicating liquor. Provided, however:

- A. The Governing Body may authorize the sale and consumption of cereal malt beverages on public property pursuant to a valid application being submitted to said body and when said body determines that such activity would not be detrimental to the health, safety, and morals of the community.
- B. Intoxicating liquor may be sold, served, dispensed and consumed in or on designated parking or sidewalk areas of a licensed drinking establishment if title to the public area lies with the City and the licensee has received authorization to expand the premises from Kansas Alcohol Beverage Control, has received authorization from the Governing Body pursuant to the provisions of O.P.M.C. Section 5.20.075, and the licensee is complying with the security and other provisions of that Section.
- C. Intoxicating liquor may be sold, served, dispensed and consumed on the Corporate Woods Founder's Park during the Jazz Festival and the July 4th celebration provided the sale, serving, dispensing and consumption shall be in accordance with the written standards approved by the Director, Parks Services.
- D. Cereal malt beverages, beer and wine as those terms are defined in O.P.M.C. Section 11.48.100 may be sold, served, dispensed and consumed at the Overland Park Fire Training Facility located at 12401 Hemlock, Overland Park, Kansas, in conjunction with professional and social events authorized by the Director of the Overland Park Fire Training Facility.
- E. Intoxicating liquor may be sold, served, dispensed and consumed on the Sykes/Lady Overland Park Golf Complex, including the Westlinks Course, located at 12501 Quivira Road and the St. Andrews Golf Course located at 11099 W. 135th Street, Overland Park, Kansas, provided the sale, serving dispensing and consumption of alcoholic liquor shall be in accordance with written standards approved by the Director, Recreation Services.
- F. Intoxicating liquor may be sold, served, dispensed and consumed on real property leased by the City to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, provided such real property is actually being used for hotel or motel purposes or purposes incidental thereto.
- G. Intoxicating liquor may be sold, served, dispensed and consumed on any property that is located within the corporate limits of the City and is under the control of the Kansas State Board of Regents and the Board of Regents has exempted said property from the provisions of K.S.A. 41-719, and amendments thereto, and the property is not being used for classroom instruction.

- H. Cereal malt beverages, beer, wine and champagne may be sold, served, dispensed and consumed on the premises of the Overland Park Arboretum Environmental Education Visitors Center to include designated patio and reception areas, provided the sale, serving, dispensing and consumption of these beverages shall be in accordance with written standards approved by the Director, Parks Services.
- I. Intoxicating liquor may be sold, served, dispensed and consumed on the land platted as Convention Center Plaza in the City of Overland Park, Kansas, in accordance with and to the extent allowed by the written standards relating to intoxicating liquor promulgated by the City Manager or his designees.
- J. Cereal malt beverages, beer, wine and champagne may be sold, served, dispensed and consumed on the premises of the Kemper Farm Property, provided the sale, serving, dispensing and consumption of those beverages shall be in accordance with written standards approved by the Director, Parks Services.
- K. Intoxicating liquor may be sold, served, dispensed and consumed at the City of Overland Park Community Centers, in accordance with written standards approved by the Director, Parks Services.
- L. Cereal malt beverages, beer, wine and champagne may be sold, served, dispensed and consumed at the Deanna Rose Farmstead provided the sale, serving, dispensing and consumption shall be in accordance with written standards approved by the Director, Parks Services.
- M. Cereal malt beverages may be sold, served, dispensed and consumed in the food court area at the Overland Park Soccer Complex provided the sale, serving, dispensing and consumption shall be in accordance with written standards approved by the Director, Recreation Services.
- N. Cereal malt beverages and beer may be sold, served, dispensed and consumed within the boundaries of the Santa Fe Commons Park during the Overland Park Fall Festival in accordance with and to the extent allowed by the written standards approved by the Director, Parks Services.
- O. Alcoholic liquor may be consumed at a special event held on public streets, alleys, roads, sidewalks or highways when a temporary permit has been issued pursuant to K.S.A 41-2645, and amendments thereto, for such special event and the Governing Body has approved the special event by ordinance or resolution. Special events may occur on a street, alley, road, sidewalk or highway only if the Governing Body closes the streets, alley, road, sidewalk or highway to motor vehicle traffic during the special event. For the purposes of this Section, "special event" means a picnic, bazaar, festival or other similar community gathering approved by the Governing Body. The boundaries of any such event shall be clearly designated in any application for the special event and shall be clearly designated in any approval granted by the Governing Body. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event. No person shall remove any alcoholic

liquor from inside the boundaries of a special event, and no alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways at any such special event. No person shall possess or consume alcoholic liquor inside the premises licensed as a special event that was not sold or provided by the licensee holding the temporary permit for such special event. Drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event. Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

Any licensed caterer selling, serving and dispensing alcohol on public property listed herein must receive authorization from Kansas Alcohol Beverage Control, authorization from the Governing Body pursuant to the provisions of O.P.M.C. Section 5.20.075, and must comply with the security and other provisions of that Section.

- P. Any person under the age of 21 who is convicted of a violation of this Section or diverted in lieu of further criminal proceedings shall be required to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee for such evaluation.

(History: Ord. POC-2941 §1, 2011; POC-2915 §1, 2011; POC-2821 §4, 2009; POC-2742 §2, 2008; POC-2654 §1, 2007; POC-2589 §1, 2005; POC-2561 §1, 2005; POC-2396 §1, 2002; POC-2209 §1, 2000; POC-2177 §1, 99; POC-2046 §1, 97; POC-2039 §1, 97; POC-2010 §1, 96; POC-1631 §6, 90; POC-1597 §2, 89; POC-1321 §7, 85; PO-84 §16; CMB-76E §1, 69; CMB-76C §1, 66; CMB-76 §11, 60) [Prior source of law: 5.12.110]

11.48.162 Prohibited Hours.

No person shall permit the serving, mixing, or consumption of alcoholic liquor on the premises of a drinking establishment, caterer, or temporary permit holder licensed under the provisions of K.S.A. 41-2601 et seq., or O.P.M.C. 5.20, between the hours of 2:00 a.m. and 9:00 a.m. on any day of the week. In addition, no caterer, or any owner, officer or employee thereof, shall allow the serving, mixing, or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day an event is catered by such caterer.

(History: Ord. POC-2010 §2, 96)

11.48.165 Penalty.

Unless a specific penalty is otherwise provided, a violation of the provisions of this chapter shall be punishable by a fine of not less than \$100 nor more than \$500 or up to thirty days imprisonment. In addition, the court shall order the offender to attend an alcohol and drug education program.

(History: Ord. POC-2200 §3, 99; POC-1631 §7, 90)

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