

6/22/09

ORDINANCE NO. 48-352

AN ORDINANCE AMENDING SECTIONS 3.08.030 AND 3.28.020 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO CABARETS AND DANCE HALLS, CREATING SECTIONS 3.30.010, 3.30.020, 3.30.030, 3.30.040, 3.30.050, 3.30.060, 3.30.070, 3.30.080, 3.30.090, 3.30.100, 3.30.110, 3.30.120, 3.30.130, 3.30.140, 3.30.150, 3.30.160, 3.30.170, AND 3.30.190 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ENTERTAINMENT ESTABLISHMENTS AND REPEALING THE ORIGINALS OF SECTIONS 3.08.030 AND 3.28.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita has received numerous complaints from neighbors concerning dance halls, entertainment establishments and commercial establishments that serve alcoholic beverages on site and provide entertainment regarding excessive noise and disorderly conduct, including assault and battery; and

WHEREAS, the City has observed violations of the established occupancy load in cabarets, dance halls and commercial drinking establishments; and

WHEREAS, the City has a duty and desire to enforce laws regarding criminal and nuisance acts which occur at such clubs, cabarets and drinking establishments, the City Council, therefore, adopts the following ordinances regarding Entertainment Establishments.

WHEREAS, those entities or persons holding a valid dance hall or cabaret license issued by the City of Wichita shall not be subject to this entertainment ordinance, until such cabaret or dance hall license expires, is renewed or is revoked.

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

SECTION 1. Section 3.08.030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

“Cabarets, etc. (a) A cabaret license shall be required for any person to operate any cafe, cafeteria, restaurant, tearoom, dining room, coffee house, private club, tavern, drinking establishment or any other place having a floor show, specialty act or other live entertainment for guests. Any license issued pursuant to this section shall be issued for one particular premise which shall be stated in the application and on the license.

(b) A cabaret license does not permit and shall not be issued to any person for the operation of such an establishment as defined in subsection (a) if such establishment:

(1) Is licensed or permitted to sell or serve alcoholic liquor or cereal malt beverages, and

(2) Intends to provide or does provide live entertainment in the form of dancing, and

(3) Is located within two hundred feet of any church, public park, public or parochial school, or residential zoning district.

The distance is to be measured from the nearest property line of the residential zoning district, church, or public or parochial school to the nearest property line of the premises on which the establishment is located or of any parking lot designated to be used by the patrons of such establishment. As used in the section ‘dancing’ means dancing performed live by any person for

consideration, monetary or otherwise, including payment of gratuities by patrons. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument, or dancing staged as part of a legitimate play, but does include, for example, without limitation, exotic dancing, go-go dancing, strip dancing and strip tease dancing.

Renewal of cabaret licenses otherwise subject to this subsection may be made for all establishments presently licensed and located within two hundred feet of any church, public park, public or parochial school, residential or zoning district, so long as the premises are used or held for use as a place in which a cabaret license and one of the following licenses is held:

- (1) Class A private club;
- (2) Class B private club;
- (3) Drinking establishment; or

(4) A license to sell cereal malt beverages for consumption on the premises; provided, however, that should such an establishment cease to be used for such purposes for a period of ninety days or more, then and in that event, no new cabaret license shall be issued for the establishment. Periods of time during which such establishment is being remodeled or is being repaired because of damage caused by fire or natural disasters such as floods or wind-storms, shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a reasonable time thereafter.

Additionally, the Special Investigations Bureau of the Wichita police department shall be notified within thirty days of closing of such establishment for remodeling or repair, such notice to state the date of commencement and completion of remodeling or repair.

(c) A license fee shall be charged for engaging in the operation of cabarets, either with or without a cover charge. The license fees for one day shall be twenty dollars, for three months shall be fifty dollars, for six months shall be seventy-five dollars and for one year shall be one hundred dollars.

(d) No cabaret license shall be issued by the City Treasurer following the City's adoption and publication of Chapter 3.30 of the Code of the City of Wichita.

(e) The provisions of this section shall apply to any license, issued pursuant to this section, until such time as the license expires, is revoked or the licensee is properly licensed pursuant to Chapter 3.30 as an entertainment establishment.”

SECTION 2. Section 3.28.020 of the Code of the City of Wichita is hereby amended to read as follows:

“License required. (a) It is unlawful for any person either as principal, officer, agent, servant or employee, to conduct any public dance, public dance hall or restaurant dance without having first obtained a license from the license collector. Provided, further, fraternal, social, school, church or other nonprofit organizations that hold dances at any location other than their own

respective locations shall be required to obtain a license from the license collector.

(b) No dance hall license shall be issued by the City Treasurer following the City's adoption and publication of Chapter 3.30 of the Code of the City of Wichita.

(c) The provisions of this section shall apply to any license, issued pursuant to this chapter, until such time as the license expires, is revoked or the licensee is properly licensed pursuant to Chapter 3.30 as an entertainment establishment.”

SECTION 3. Section 3.30.010 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Purpose. The City of Wichita encourages the development of Arts and Culture and recognizes that having entertainment establishments provide a means for such activity. The City of Wichita further recognizes that having a variety of entertainment in the City promotes a rich and diverse cultural experience.

The City of Wichita also recognizes that entertainment establishments serving alcohol have demonstrated the potential for creating an environment where various types of disturbances, excessive noise and disorderly conduct by inebriated patrons may occur. These negative effects are adverse to the public safety and the quality of life in the community.

The purpose of this Chapter is to regulate the operation of all entertainment establishments so as to minimize the negative effects and to preserve the public

safety, health and welfare. It is not the City's intent to regulate or restrict the type or content of entertainment provided in these establishments. All licensees will be responsible for controlling patron conduct on the premises of such establishments, making adequate provisions for security and crowd control to minimize disturbances caused by the operation of such entertainment establishments."

SECTION 4. Section 3.30.020 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Definitions. The following words, as used in this Chapter, have the meanings set forth below:

'Ambient music' means low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient music does not include music played by a disc jockey, 'DJ' or music that is used for karaoke or other live performances. Ambient music may include music played by a jukebox, when such music is inaudible from any portion of the exterior of the premises.

'Chief of Police' means the Chief of the Wichita Police Department or his/her designee.

'Entertainment' means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

- (a) Dancing by patron(s) to live or recorded music.

(b) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as ‘disc jockey’ or ‘DJ, or

(c) The presentation of live music whether amplified or un-amplified, or

(d) The presentation of music videos, music concerts or other similar forms of musical entertainment from any source, or

(e) Any amusement or event such as live music or other live performance which is knowingly permitted by any Entertainment Establishment, including, but not limited to, presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, dance acts, concerts, dances, live bands, karaoke or other live music.

‘Entertainment Establishment(s)’ means any event center or any person or entity which provides entertainment as defined by this chapter, or any person or entity which provides a venue for any such entertainment. Such term shall not include book readings, storytelling, the playing of ambient music, or other similar activities for which no fee is charged.

‘Entertainment License’ means a license obtained from the City, pursuant to the provisions of this Chapter, for the purposes of operating an Entertainment Establishment.

‘Event Center’ means premises which are frequently rented out for public or private activities that are not repeated on a weekly basis, and which are not open to the public on a daily basis at times other than when an event is scheduled.

‘Health Officer’ means the Director of Environmental Services or his/her designee.

‘License’ means the authority to conduct the business of an entertainment establishment within the city limits.

‘Licensee’ means any person to whom a current license has been issued under this Chapter authorizing such person to conduct the business of an entertainment establishment within the city limits.

‘Loitering’ means remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include, but not be limited to, standing around, hanging out, sitting, kneeling, sauntering or prowling.

‘Manager’ means a person, regardless of the job title or description, who is operating the establishment or who has discretionary powers to organize, direct, carry on, or control the operations of an Entertainment Establishment or teen club. Authority to engage in one or more of the following functions is prima facie evidence that a person is a Manager of the Entertainment Establishment or teen club:

- (a) Hire or terminate employees; or
- (b) Contract for the purchase of furniture, equipment, or supplies, except for the occasional replenishment of stock; or

(c) Disburse funds of the business, except for the receipt of regularly replaced items of stock; or

(d) Make or participate in making policy decisions regarding operations of the Establishment.

‘Music’ as used in this Chapter shall not apply to radios or ambient music.

"Nonprofit dance" means any dance held by a fraternal, social, school, church or other nonprofit organization which is merely incidental to its principal purpose and where the general public is not solicited or permitted.

‘Non-profit organization’ means an organization or institution organized under Internal Revenue Code Section 501(c)(3) and recognized as a public charity or private foundation established for a religious, charitable, scientific, literary or public safety purpose.

‘Person’ means any individual, owner, operator, corporation, partnership, or association.

‘Photo identification’ means a valid driver’s license, non-driver identification card, government issued identification card or a current school identification card which contains the individual’s photograph.

‘Premises’ means any place where an entertainment establishment is operated or maintained and includes all hallways, bathrooms, parking areas, and other adjacent portions of the premises, which are under the control of the licensee or which are utilized by the licensee and are accessible to the public during operating hours .

‘Responsible Person’ means any person who is any of the following:

- A. The person who owns the Entertainment Establishment or teen club; or
- B. The person in charge of the Entertainment Establishment or teen club; or
- C. The person using the Entertainment Establishment or teen club under a special arrangement, contract or rental agreement; or
- D. The Entertainment Establishment’s manager, on-site supervisor, or other employee who is responsible for the operation of the establishment;

‘Superintendent’ means the Superintendent of the Office of Central Inspection or his or her designee.

‘Teen Club’ is any building or part or other enclosed place where a teen dance is held or teen dancing is permitted, not including:

- a. an accredited public or private school or college;
- b. property owned or controlled by the federal, state, or local government;
- c. a facility operated by an organization which has been recognized as exempt from federal income taxation when teen dancing is but an occasional activity incidental to the facility’s primary purposes.

SECTION 5. Section 3.30.030 of the Code of the City of Wichita, Kansas, is created to read as follows:

“License required. A. It is unlawful for any person either as the owner, principal, officer, agent, servant, responsible person or employee, to own, lease, manage, maintain or operate a teen club or entertainment establishment without having first obtained a license from the City Treasurer.

B. A teen club or entertainment establishment license expires one year after date of issue.

C. A license under this section is not transferable to another person or location. A change in ownership shall require the new owner to pay a new application fee and secure a new entertainment establishment or teen club license.”

SECTION 6. Section 3.30.040 of the Code of the City of Wichita, Kansas, is created to read as follows:

“License Continuance. Any person holding a valid cabaret or dance hall license, issued prior to the publication of this ordinance, may continue with the operation of that business until such time that the cabaret or dance hall license expires, or is revoked. Upon expiration or revocation of such license, an application for an Entertainment Establishment License shall be submitted to the City Treasurer if the business or individual is to continue operation of such business.”

SECTION 7. Section 3.30.050 of the Code of the City of Wichita, Kansas, is created to read as follows:

“License--Exceptions. Nothing in this Chapter shall be construed to require any license for the following activities:

- (a) entertainment in private residences where no admission is charged;
- (b) entertainment conducted by any public or parochial school under direct faculty supervision or by any church when the dance or live entertainment is directly supervised by the church authorities;
- (c) entertainment conducted for service men or women or both, under the direct supervision of United Service Organizations;
- (d) entertainment officially sanctioned by or conducted in a fraternity or sorority house, occupied by bona fide students of a school or college, in which the public is not invited;
- (e) dance lessons, theatrical and performing arts lessons;
- (f) any entertainment sponsored by the City of Wichita;
- (g) entertainment by any nonprofit organizations when all proceeds, arising from such entertainment are used exclusively for the benevolent purposes of such organization;
- (h) any non-profit dance as defined in this chapter;
- (i) assemblies, music concerts, live performances or re-enactments which are sponsored by or which occur on the property of public or parochial schools, or City of Wichita public libraries;

(j) entertainment, dances, live performances, or other events for which a community event permit has been issued by the City of Wichita;

(k) the use of a radio, juke box, television, or video games, which is incidental to the primary function of serving food;

(l) motion picture theaters;

(m) book readings, book signings, poetry recitations and any other similar entertainment consisting of the spoken word, including plays;

(n) entertainment consisting of ambient or incidental music provided for the guests by musicians such as a piano player, harpist, strolling violinist, mariachi band, or guitarist. If there is an admission charge required to observe such entertainment, it will not be considered incidental.

(o) pool hall, billiard hall or bowling alley that does not provide space for dancing;

(p) theaters where patrons sit in parallel rows of fixed seats or dinner theaters;

(q) entertainment conducted in connection with a regularly established recreation or theme park.”

SECTION 8. Section 3.30.060 of the Code of the City of Wichita, Kansas, is created to read as follows:

“**License--Fees.** For any entertainment establishment or teen club the following license fees shall be paid:

For one day \$ 25.00

For one month or less \$100.00

For six months or less \$275.00

For one year or less \$400.00”

SECTION 9. Section 3.30.070 of the Code of the City of Wichita, Kansas, is created to read as follows:

“**Hours of operation.** A. It is unlawful for any licensee, owner, manager, or responsible person of a teen club to permit or allow entertainment between the hours of midnight and noon. No person, except an employee, shall be on the licensed premises of a teen club after 12:30 a.m.

B. It shall be unlawful for any licensee, owner, manager or responsible party of an entertainment establishment to permit or allow entertainment between the hours of two a.m. and noon. No person, except an employee, shall be on the licensed premises of an entertainment establishment after 2:30 a.m.”

SECTION 10. Section 3.30.080 of the Code of the City of Wichita, Kansas is created to read as follows:

“**Application--Contents.** A. Before any license is granted or issued for a teen club or entertainment establishment, an application shall be filed with the City Treasurer, setting forth the following facts:

(1) The name, address, social security number, date of birth of the applicant and telephone number where the applicant can be reached between the hours of eight a.m. and five p.m.;

(2) Location of the teen club or entertainment establishment;

(3) Date for which the license is desired;

(4) Hours and days the teen club or entertainment establishment is to be open and closed;

(5) A statement as to whether or not cereal malt beverages or alcoholic liquor will be sold to patrons at the location of the entertainment establishment;

(6) A statement that the applicant is familiar with the conditions imposed by the terms of this Chapter.

(7) Maximum occupant load of the building, facility or area;

(8) A description of the nature of entertainment to be provided.

B. In addition the applicant must furnish:

(1) The names and addresses of the owner of the premises which such establishment is located.

(2) The manager or operator and, if a corporation or partnership, all the names and addresses of the officers of such corporation or partnership and any individual who owns twenty five or more percent of the stock of such corporation. If the license is to be held by a corporation, the resident agent and registered office of said corporation;

(3) The name, address, social security number, and date of birth of the applicant, owner, manager and other responsible person of the establishment. If a corporation, all the names, addresses, social security numbers and date of birth of the officers, managers or directors of such corporation and any individual who owns twenty five or more percent of the stock of such corporation. If the license is to be held by a corporation, the resident agent and registered office of said corporation. If the

applicant is a partnership, all the names, addresses, social security numbers, and date of birth of all partners of the partnership.

(4) A plan to insure that adequate traffic control, crowd protection and security will be maintained and that ages of patrons admitted to the establishment will be maintained;

(5) An emergency management plan, consisting of, but not limited to: fire evacuation, storm shelter provisions, patron crowd control, and emergency access for police, fire and ambulance;

(6) The name of the private security agency, if any, to be employed to provide security for the club or entertainment establishment;

(7) Detailed plans and drawing of the teen club or entertainment establishment and adjoining areas indicating the dance floor, the waiting area for persons seeking admission, the parking areas, all restrooms, coat rooms, game rooms and all other spaces accessible by patrons and all interior and exterior doors and windows, and all sources of exterior lighting.

(8) A statement as to whether the applicant has ever had any license denied, revoked or suspended by the City of Wichita or the State of Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial.

(9) A statement that the applicant consents and agrees that any member of the Police Department or Fire Department as well as other

code enforcement or health officers of the City may, at any time, enter and inspect any part of such premises.

C. A license shall be denied if one or more of the following conditions exist:

(1) Any applicant, owner, establishment manager, officer, manager or director of a corporate applicant, any person owning more than twenty five percent or more of the stock of a corporate applicant, or any partner of a partnership applicant of the teen club or entertainment establishment has, within the preceding ten years, been convicted of or placed on diversion for a:

- a. felony; or
- b. for any conviction or diversion of a misdemeanor

within the last three years involving:

- i. laws pertaining to any controlled substance(s) prohibited by the Uniform Controlled Substance Act, K.S.A. 65-4101, et seq. and amendments thereto;
- ii. laws pertaining to alcohol or cereal malt beverage;
- iii. prostitution;
- iv. public indecency;
- v. a sex crime or other person crime as defined by Chapter 21 of the Kansas Statutes Annotated;

vi. any crime of violence or physical force; or

vii. any weapons charge.

viii. violations of this chapter, or Sections 3.08.030
or Chapter 3.28 of the Code of the City.

(2) An applicant is less than twenty-one (21) years of age.

(3) The premises do not comply with the health, housing, fire
and zoning codes of the City of Wichita.

(4) The applicant has knowingly made a false, misleading or
fraudulent statement of fact to the City in the application process.

(5) The application is incomplete or if it contains any material
misrepresentation;

(6) The application does not propose measures for the
protection of the public health, safety and welfare in terms of traffic
control, crowd protection and security, the monitoring of the ages of
patrons or an emergency management plan.

D. The application is filed with, and the license fee is paid to, the City
Treasurer. The license will not be issued until the application has been reviewed
and approved by the Chief of Police, the Office of Central Inspection and the Fire
Chief.”

SECTION 11. Section 3.30.090 of the Code of the City of Wichita, Kansas, is created to
read as follows:

“**Administrative Procedures.** A. A teen club or entertainment
establishment license may be suspended, revoked, or denied if:

(1) Any data furnished on the application is incomplete, false or is not updated as required by this Chapter;

(2) Failure to comply with any condition of the teen club or entertainment establishment license; or

(3) The licensee or a manager has become ineligible to hold a license.

(4) The owner, manager, partner, director or other person owning twenty-five percent or more of the stock of a corporate licensee or a partner of a partnership licensee is convicted of any violation, which would make them ineligible to obtain an entertainment establishment or teen club license.

(5) The premises are in violation of the health, housing, fire, zoning or building codes of the City of Wichita, or the State of Kansas.

(6) Evidence of a material variance in the actual plan and design of the premises from the plans submitted pursuant to this Chapter, or from the original design of the premises when initially licensed, with the concurrence of the Office of Central Inspection.

(7) Any Police Officer, Fire Department Official, Office of Central Inspection, or Environmental Services Inspector is refused access to inspect the premises during normal business hours.

(8) The premises are in violation of the maximum occupant load of such building.

(9) The licensee or any employee, agent or responsible person is found to be in violation of the provisions of this chapter or any other ordinance, rule or regulation by the city council of the City of Wichita.

(10) The licensee fails to comply with additional security requirements imposed by the Chief of Police, pursuant to the provisions of subsection (C) set forth below.

For the purposes of this section, ‘conviction’ or ‘violation’ shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

B. The Chief of Police shall provide written notice of the intent to revoke, suspend or deny an entertainment establishment or teen club license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation, denial, or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such denial, revocation or suspension.

C. In lieu of suspension or revocation, the Chief of Police may impose additional conditions on the license to protect the public health, safety and welfare. The imposition of such additional conditions shall be based on violations occurring on the premises by the licensee, his/her employees, patrons, agents or responsible person of the provisions of this chapter, the laws of the City of

Wichita, or state or federal laws. Conditions shall be based upon specific and articulable facts reasonably related to insuring public health and safety, including but not limited to: the protection of minors from alcohol, protection of patrons from criminal activity, including but not limited to homicide, aggravated assault, weapon offenses, drug offenses and disorderly conduct, prevention of public nuisances, enhancement of fire protection, traffic control, crowd control, security lighting and emergency access.

D. The Chief of Police shall notify the licensee in writing of any additional conditions imposed on the licensee. Such notice shall specify the additional conditions, set forth facts which support the basis for the addition of such conditions and a time frame for completion of such additional conditions. Such conditions may include, but are not limited to the following:

- (1) Prohibiting the establishment from alcohol sales of any kind;
- (2) Restrictions upon the hours of operation of the establishment;
- (3) Restrictions upon the maximum occupancy within the establishment;
- (4) Requiring the owner, licensee or responsible person to identify individuals that are prohibited from entering onto the premises;
- (5) Completion of improvements upon the licensed premises that have an impact of mitigating crime such as fences, lights, security cameras or other devices;

- (6) Increased presence of security personnel;
- (7) Other conditions which may be appropriate to remedy

violations of this chapter by the licensee.”

SECTION 12. Section 3.30.100 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Appeal Procedure. A. Any applicant or licensee aggrieved by the denial, suspension, modification, revocation or imposition of additional conditions, of an entertainment establishment or teen club license may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Chief of Police or his/her designee. The Notice of Appeal shall specify:

- (1) the name and address of the appellant;
- (2) the date of application;
- (3) the date of the denial, suspension, modification, revocation or imposition of additional conditions of the license or application;
- (4) the factual basis for the appeal.

B. Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension, modification or revocation of the license until the matter is heard by the City Council.

C. The City Council may approve the denial, suspension, modification, revocation, or imposition of additional conditions, overrule the

denial, suspension, modification, revocation or imposition of additional conditions or modify the decision of the Chief of Police.

D. In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation, is prima facia evidence of such violation of the provisions of Section 3.30.090 of the Code of the City of Wichita.

E. The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council."

SECTION 13. Section 3.30.110 of the Code of the City of Wichita, Kansas, is created to read as follows:

"List of Managers. If, at any time after the filing of the application or during the term of a license, a new manager is hired who has not been identified to the Wichita Police Department, the applicant or licensee is required to furnish, within ten business days, the name, address and date of birth of such manager or responsible person to the City Treasurer. Similarly, the licensee is required to notify the City Treasurer whenever a person listed on the application or supplemental list is discharged. The Chief of Police or his/her designee shall investigate the criminal history of all such managers or responsible persons and may revoke or decline to renew a license when any such person has the disqualifying history described in Section 3.30.080."

SECTION 14. Section 3.30.120 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Security Personnel and Control of Premises. A. It is the obligation of the owner, manager, licensee or responsible person and a condition of the license to maintain, at all times when the teen club or entertainment establishment is open for business, adequate security personnel for the premises of such business.

B. It is the obligation of the owner, manager, licensee or responsible person of a teen club or entertainment establishment where dancing occurs, to maintain illumination in such entertainment establishment at a minimum level of one candle foot at a plane three feet above the dance floor.

C. The owner, licensee, manager or responsible person shall provide for the orderly dispersal of patrons from the premises of the teen club or entertainment establishment at closing time, and shall prevent patrons from congregating or loitering on the premises of the teen club or entertainment establishment.

D. The owner, licensee, manager or other responsible person shall be responsible to insure that an adequate number of security personnel are employed and in attendance before, during and following each entertainment event as is necessary in order to maintain order and insure compliance with all applicable federal, state and city laws and ordinances.

E. There must be a person in charge of and responsible for security on duty at all times when the teen club or entertainment establishment is open to the public or when patrons are leaving the premises at closing time. Security personnel will remain on the premises for a period of not less than thirty minutes after the closing time of such establishment to direct the orderly dispersal of patrons from the premises of the establishment.

F. The owner, licensee, manager or responsible party of a teen club or entertainment establishment is responsible to exercise appropriate control over its invitees on the premises for such purposes as preventing unnecessary noise, litter, trespass, loitering, property damage, traffic obstruction and similar activities which may constitute a nuisance.

G. If the history of operation of a teen club or entertainment establishment shows inadequate control of litter, the health officer may impose appropriate regulations, including the posting of a bond, to ensure litter prevention or clean-up as a condition of continued validity of the existing license or of the issuance of a future license. Such decision may be appealed pursuant to the procedures set forth in Section 3.30.100.

H. One of the purposes of the security personnel requirement is to maintain the public peace and order on the premises of the teen club or entertainment establishment. The licensee is under a continuing obligation to take reasonable measures, including to call the police department, to curtail any conduct which is or threatens to be violative of state or local laws or offensive to public health, decency and morality, or peace and order, including, without

limitation, minors in possession of liquor or tobacco products, use or possession of controlled substances, crimes of violence and disorderly conduct.”

SECTION 15. Section 3.30.130 of the Code of the City of Wichita, Kansas, is created to read as follows:

“**Right of Access.** During any hours in which any person is present on the premises, all teen clubs and entertainment establishments shall be open to inspection by City Health, Fire, Zoning, Building and license inspectors and Wichita Police Officers or other law enforcement agencies.”

SECTION 16. Section 3.30.140 of the Code of the City of Wichita, Kansas, is created to read as follows:

“**Restrictions on Admission to Teen Clubs .** A. There may not be admitted into a teen club any person nineteen years of age or older or less than thirteen years of age except:

- (1) a manager or employee of the club; or
- (2) a parent or legal guardian accompanying his or her child or ward; or
- (3) a spouse of a person who can legally be admitted to the club.

B. The licensee, manager or responsible person of an entertainment establishment or teen club may not admit or allow the admittance of any person who does not possess and display satisfactory photo identification, as defined by Section 3.30.020. A school identification card with satisfactory photo

identification indicating that the individual is in eighth grade or high school may be accepted by the licensee, manager or responsible person of a teen club.”

SECTION 17. Section 3.30.150 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Additional Regulations and Observation Thereof Required.

A. No licensee, owner, principal, officer, manager, responsible person or other employee of a teen club or entertainment establishment coming in contact with members of the public may knowingly, or in circumstances when he or she should have known, allow or permit the following to occur on the premises:

(1) CONTROLLED SUBSTANCES: Controlled substances may not be possessed, offered for sale or consumed on the premises of the teen club or entertainment establishment.

(2) EMPLOYMENT OF MINORS UNDER EIGHTEEN. Persons under eighteen years of age may not be employed in, about or on the premises of an entertainment establishment where cereal malt liquor or alcoholic liquor is dispensed or consumed.

(3) ILLEGAL CONSUMPTION OF ALCOHOL. Alcoholic liquor or cereal malt beverages may not be consumed or possessed by any person under the age of twenty-one years. Any such minor shall be requested by the owner, licensee, manager or responsible person to immediately leave the premises.

(4) LOITERING: No patron of the establishment, while on the premises of such establishment, shall be allowed to loiter, create a public nuisances or breach of the peace.

(5) MAXIMUM NOISE LEVELS. Noise may not exceed the maximum allowable noise levels set forth in Chapter 7.41 of the Code of the City of Wichita. Noise shall not be of such volume, intensity or duration as to disturb a person of reasonable sensibilities. The owner, manager or responsible person shall be strictly liable for all noise produced within the entertainment establishment or teen club.

(6) TEEN CLUBS: No patron over eighteen may enter into or remain upon the premises of a teen club.”

SECTION 18. Section 3.30.160 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Premises capacity. It shall be the duty of the Fire Chief and the Superintendent of Central Inspection to determine the number of persons who can safely be accommodated at any one time in any building, premises or location where any teen club or entertainment establishment is located. The Fire Chief and the Superintendent of Central Inspection shall rate and limit the occupancy of the building, premises or location and furnish a certificate thereof to the owner or operator of such teen club or entertainment establishment, which owner shall be required to post such certificate near the main exit in the building. Such owner, operator, licensee or responsible person is hereby required to limit the attendance at such teen club or entertainment establishment to such capacity as has been

determined by the Fire Chief and Superintendent of Central Inspection. It shall be unlawful to post a certificate of occupancy showing a greater capacity than that shown by the Office of Central Inspection and Fire Chief.”

SECTION 19. Section 3.30.170 of the Code of the City of Wichita, Kansas, is created to read as follows:

“False statement of age unlawful. It is unlawful for any person to make any false statement as to his or her age for the purpose of gaining admission to, or remaining in any teen club or entertainment establishment, or for the purpose of enabling any other person to gain admission to or remain in any teen club or entertainment establishment where cereal malt beverage or alcoholic liquor is dispensed or consumed.”

SECTION 20. Section 3.28.190 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Penalties. A. Any person who violates any of the provisions of this chapter within the corporate limits of the city shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by the following fines:

(1) Upon a first conviction, a fine of not more than two thousand five hundred dollars:

(2) Upon a second conviction, a fine of not less than two hundred fifty dollars nor more than two thousand five hundred dollars;

(3) Upon a third conviction, a fine of not less than five hundred dollars nor more than two thousand five hundred dollars;

(4) Upon a fourth or subsequent conviction, a fine of not less than one thousand dollars nor more than two thousand five hundred dollars;

B. The imposition of the fines established in subparagraphs (a)(2) through (4) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

C. For the purposes of determining whether a conviction is a first or subsequent conviction for sentencing, conviction includes being convicted of a violation of this chapter. It is irrelevant whether an offense occurred before or after conviction for a previous offense or whether the offense occurred at or upon the same licensed premises.”

SECTION 21. The originals of Section 3.08.030 and 3.28.020 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 22. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of June,
2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law