Passed on emergency basis - 12/7/87 - mam

ORDINANCE NO. 210

AN ORDINANCE AMENDING ORDINANCE 88 OF THE CITY OF BASEHOR, KANSAS, REPEALING ARTICLE 15 OF SAID ORDINANCE 88 ENTITLED "PUBLIC INTOXICATION" AND AMENDING ARTICLE 12 WHICH SHALL NOW BE ENTITLED "ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGE OFFENSES" AND DEFINING AND PROHIBITING THE "PUBLIC CONSUMPTION OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGE", AND FURTHER PROHIBITING THE TRANSPORTATION OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGE AND FURTHER PROHIBITING THE POSSESSION, CONSUMPTION OR PURCHASE OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGE BY PERSONS UNDER 21 YEARS OF AGE WITHIN THE CITY LIMITS OF THE CITY OF BASEHOR, KANSAS.

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

Section 1: Definitions.

(1) "Alcoholic Liquor" means alcoholic, 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 cereal malt beverage.

(2) "Beer" when its meaning is not enlarged, modified, or limited by other words, means a beverage, containing more than 3.2% alcohol by weight, obtain by alcoholic fermentation of an infusion or concoction of barly, or other grain, malt and hops in water and includes beer, ale, stout, lager, porter, and similar beverages having such alcoholic content.

(3) "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 liquor which is more than 3.2% alcohol by weight.

(4) "Minor" means any person under 21 years of age.

(5) "Public Consumption of Alcoholic Liquor or Cereal Malt Beverage" is defined as consuming alcoholic liquor or cereal malt beverage while being on a highway or street or upon a publicly owned place or publicly owned building or inside vehicles while upon the public streets, alleys, roads or highways, or any other place to which the general public has access, except upon or in

premises licensed to sell alcoholic liquor and/or cereal malt beverage for consumption therein.

(6) "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whisky, gin, or other sprituous liquors, and such liquors when rectified blended or otherwise mixed with alcohol or other substances.

(7) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruit, berries, or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

Section 2. Public Consumption of Alcoholic Liquor and/or Cereal Malt Beverage Prohibited; Penalty.

(1) It shall be unlawful for any person to consume liquor and/or cereal malt beverage while upon a highway or street or upon a publicly owned place or within a public building or inside vehicles while upon the public streets, alleys, roads or highways or any other place to which the general public has access, except upon or in premises licensed to sell alcoholic liquor and/or cereal malt beverage for consumption therein, within the city limits of Basehor, Kansas.

(2) Violation of this section is a Class "C" misdemeanor.

Section 3. Transportation of Alcoholic Liquor and/or Cereal Malt Beverage.

(1) No person shall transport in any vehicle upon a highway or street any alcoholic liquor or cereal malt beverage unless such liquor or beverage is: (a) in the original unopened container, the seal of which has not been broken, and from which the original cap, cork, or other means of closure has not been removed; (b) in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is motion; or (c) in the exclusive possession of a passenger in a vehicle which is a recreatiional vehicle, as defined by K.S.A. Sup. 75-1212, or a bus, as defined by K.S.A. 8-1406, who is not in the driving compartment of such

vehicle or who is in a portion of such vehicle from which the driver is not directly accessible.

(2) Violation of this section is punishable by a fine of not more than $200.00 or by imprisonment for not more than 6 months, or both.

(3) Subject to the provisions of subsection (d), in addition to any other penalty or disposition ordered the court upon conviction or adjudication of a violation of subsection (a) of this section shall suspend the person's drivers license or privilege to operate a motor vehicle on the streets and highways of this State pursuant to and in the manner prescribed by subsection (d) of K.S.A. 41-804 (alcoholic liquor) or subsection (c) of K.S.A. 41-2719 (cereal malt beverage). Upon conviction or adjudication of the first violation of such person, the suspension shall be for 3 months. Upon conviction or adjudication of a second or subsequent violation, the subspension shall be for one year.

(4) In lieu of suspending the drivers license or privilege to operate a motor vehicle on the highways of this State or of any person convicted of violating this section, as provided in subsection (c), the court may, pursuant to and in the manner prescribed by subsection (f) of K.S.A. 41-804 or subsection (f) of K.S.A. 41-2719, enter an order which places conditions on such persons' privilege of operating a motor vehicle on the highways of this State, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this State. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of less than 3 months for a first violation, nor more than 1 year for a second violation. If any person shall violate any of the conditions imposed under this subsection, such persons' drivers' license or privilege to operate a motor vehicle on the highways of this State shall be revoked by the court for a period of not less than 60 days nor more than 1 year.

Section 4. Unlawful Possession, Consumption, or Purchase of Cereal Malt Beverage by a Minor; Penalties.

(1) Except with regard to serving of cereal malt beverage as permitted by law, no person shall possess, consume, obtain, purchase, or attempt to obtain or purchase cereal malt beverage, except as authorized by law, unless such person shall be 21 years of age or otherwise of legal age for consumption of cereal malt beverages.

(2) Violation of this section by a person 18 or more years of age, but less than 21 years of age, is a misdemeanor punishable by a fine of not less than $100.00, nor more than $250.00, or 1 month in jail, or both.

Section 5. Unlawful Possession, Consumption, or Purchase of Alcoholic Liquor by a Minor.

(1) Except with regard to serving of alcoholic liquor as permitted by law, no person under 21 years of age shall possess, consume, obtain, purchase, or attempt to obtain or purchase, alcoholic liquor, except as authorized by law.

(2) Violation of this section by a person 18 or more years of age, but less than 21 years of age, is a misdemeanor punishable by a fine of not less than $100.00, nor more than $250.00, or 30 days in jail, or both.

Section 6. Severence Clause.

The provisions of this ordinance are declared to be severable and if any part or parts of this ordinance shall be held to be invalid, such invalidity shall not effect the validity of the remaining parts of this ordinance, it being the legislative intent of the governing body that this ordinance shall stand, not withstanding the invalidity of any part.

Section 7. Repealing.

Any ordinance in conflict herewith, is hereby repealed.

Section 8. This ordinance shall take effect and be in force from and after its passage and publication as provided by law.

Passed and approved by the Governing Body of the City of Basehor, this 7th day of December, 1987.

Mayor Anna M. Landauer
Anna Mary Landauer, Mayor

Attest:

Mary A. Mogle
Mary Ann Mogle, City Clerk