

(First published in the Cowley Courier Traveler on Wednesday, March 20, 2019)

BILL NO. 1916

ORDINANCE NO. 4105

AN ORDINANCE

REGULATING the sale of cereal malt beverage and beer containing not more than 6% alcohol by volume within the City of Winfield, Kansas, by amending Division 1, and repealing Division 2 and Division 3, and adopting a new Division 2, Article II, Chapter 6 of the Code of the City of Winfield, Kansas.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. New definitions in Section 6-1 Definitions shall be adopted by striking the following definitions and adding new definitions as follows:

Strike Alcoholic Liquor definition and add:

Alcoholic liquor means alcohol, spirits, wine, beer and every liquor 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 enhanced cereal malt beverage containing not more than 6 percent alcohol by weight.

Strike Case Retailer definition and add:

Case retailer means a licensee who has a license to sell only at retail enhanced cereal malt beverages in original and unbroken case lots, and not for consumption on the premises.

Strike Cereal Malt Beverages definition and add:

Enhanced cereal malt beverage means cereal malt beverage as that term is defined in K.S.A. 41-2701, and amendments thereto, and such term shall include beer containing not more than 6% alcohol by volume when such beer is sold by a retailer licensed under the Kansas Cereal Malt Beverage Act.

Strike Gross Revenues definition and add:

Gross revenues only includes that income derived from enhanced cereal malt beverages and other food consumables.

Strike Legal Age for Consumption of Cereal Malt Beverage definition and add:

Legal age for consumption of enhanced cereal malt beverage means 21 years of age.

Strike Place of Business definition and add:

Place of business means any place, except a tavern, at which enhanced cereal malt beverages are sold.

Strike Tavern definition and add:

Tavern means any establishment deriving, in any one month of the calendar year, 50 percent or more of its gross revenues from the sale of enhanced cereal malt beverages.

Strike Temporary Entertainment District definition and add:

Temporary entertainment district means a defined area, which includes City streets, alleys, parking lots and public sidewalks on which the City Commission has authorized the sale, possession or consumption of alcoholic liquor or enhanced cereal malt beverage for a specific period of time, during a community event which has been properly permitted under Chapter 8 of this Code.

Strike Wholesaler and Distributor definition and add:

Wholesaler and distributor means persons who sell or offer for sale any beverage referred to in this Chapter to persons authorized by this Chapter to sell enhanced cereal malt beverages at retail.

Section 2. A new Division 2, Article II, Chapter 6 of the Code of the City of Winfield, Kansas. Retail License and Operational Rules and Restrictions for Retail Establishments shall be adopted, striking the current Division 2 and Division 3, Article II, Chapter 6 of the Code of the City of Winfield, Kansas, and new Division 2 shall read as follows:

Division 2. Retail License and Operational Rules and Restrictions for Retail Establishments.

Section 1. Sections 6-31 through 6-37 shall be modified to strike the language “cereal malt beverage” and replace with “enhanced cereal malt beverage”.

Sections 6-38 through 60-60 reserved.

Sec. 6-61. REQUIRED. No person shall sell any enhanced cereal malt beverage at retail without first having secured a license for each tavern or place of business which such person desires to operate within the corporate limits of the City, as provided in this Division. A person having a license to sell enhanced cereal malt beverages at retail only, in original and unopened containers and not for consumption on the premises, shall not sell such beverage in any other manner.

Sec. 6-62. LICENSE ISSUED BY CITY. The “Cereal Malt Beverage License” issued by the City of Winfield, Kansas, pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in Section 1, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

Sec. 6-63. LICENSE REQUIRED OF RETAILER.

(a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverage in any other manner.

Sec. 6-64. APPLICATION. Any person desiring a license shall make an application to the governing body of the City and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the Attorney General of the State of Kansas, and shall contain:

(a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;

(b) The particular place for which a license is desired;

(c) The name of the owner of the premises upon which the place of business is located;

(d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.

(e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making the application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;

(f) Each application for a general retailer's license shall be accompanied by a certificate from the Kansas Department of Health.

(g) Each application for a general retailer's license shall be accompanied by a certificate from the City fire chief certifying that he or she has inspected the premises to be licensed. The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the City with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the City for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The Chief shall report to the City Manager not later than five working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

Sec. 6-65. LICENSE APPLICATION PROCEDURES.

(a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the City Clerk 10 days in advance of the governing body meeting at which they will be considered.

(b) The City Clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.

(c) The Clerk's office shall provide copies of all applications to the Police Department, to the Fire Department, and to the City-County Health Department, when they are received. The Police Department will run a record check on all applicants and the Fire Department and

Health Department will inspect the premises. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.

(d) The governing body will not consider any application for a new or renewal license that has not been submitted 10 days in advance and been reviewed by the above city departments.

(e) An applicant who has not had an enhanced cereal malt beverage license in the City shall attend the governing body meeting when the application for a new license will be considered.

Sec. 6-66. LICENSE GRANTED; DENIED.

(a) The minutes of the Governing Body shall show the action taken on the application.

(b) If the license is granted, the City Clerk shall issue the license which shall show the name of the licensee and the year for which issued.

(c) No license shall be transferred to another licensee.

(d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

Sec. 6-67. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

Sec. 6-68. LICENSE, DISQUALIFICATION. No license shall be issued to:

(a) A person who has not been a resident in good faith of the State of Kansas for at least one year immediately preceding application and a resident of Cowley County for at least six months prior to filing of such application.

(b) A person who is not a citizen of the United States.

(c) A person who is not of good character and reputation in the community in which he or she resides.

(d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any State or of the United States.

(e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.

(f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the City or County.

(g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, or a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this State.

(h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.

(i) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license.

Sec. 6-69. RESTRICTION UPON LOCATION. No license shall be issued for a location that does not conform to the zoning ordinances of the City. No license shall be issued for the sale of enhanced cereal malt beverages for consumption on premises located within 300 feet of any church, public or parochial school, college, library, hospital or residential zoning district, the distance to be measured from the nearest property line of the designated zone or public buildings, to the nearest property line of the building in which enhanced cereal malt beverages are sold. Renewal of licenses may be made for all taverns and places of business presently licensed within 300 feet of any residential zoning district or such institutions, so long as the premises are used or held for use as a tavern or place of business; provided, however, that should a tavern or place of business located within 300 feet of the property line of any residential zoning district or such institution cease to be used as a tavern for a period of 90 days or more, or the premises be used for another type of business, then no new license shall be issued for the sale of enhanced cereal malt beverages for consumption on such premises. Periods of time during which taverns are being remodeled or are being repaired because of damage caused by fire or natural disasters such as floods or windstorms shall not be included in computing the 90-day period; provided, however, that any remodeling or repair must be commenced within 90 days after the closure of any given structure and completed within a reasonable time thereafter. Additionally, the City shall be notified within 30 days of closing whenever any tavern is closed for remodeling or repairs. Such notice shall state the date when remodeling will start and the date it will be completed. This subsection only applies to establishments in which at least 50 percent of the gross revenue in a calendar year is derived from the sale of enhanced cereal malt beverages.

Sec. 6-70. LICENSE FEE. The rules and regulations regarding license fees shall be as follows: The application for a license under this Division shall be accompanied by cash in the amount of the license fee specified in Section 34-6, and upon approval of the governing body, a license shall issue to the applicant. Full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued.

Sec. 6-71. SUSPENSION OF LICENSE. The Chief of Police, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this ordinance or other laws pertaining to enhanced cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within

seven days from the date of such order.

Sec. 6-72. LICENSE SUSPENSION/REVOCATION BY GOVERNING BODY. The governing body of the City, upon five days' written notice, to a person holding a license to sell enhanced cereal malt beverages shall permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

(a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;

(b) If the licensee has violated any of the provisions of this section or has become ineligible to obtain a license under this Section;

(c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling enhanced cereal malt beverages;

(d) The sale of enhanced cereal malt beverages to any person under 21 years of age;

(e) For permitting any gambling in or upon any premises licensed;

(f) For permitting any person to mix drinks with materials purchased in any premises licensed or brought into the premises for this purpose;

(g) For the employment of any person under the age established by the State of Kansas for employment involving dispensing enhanced cereal malt beverages;

(h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor.

(i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed;

(j) The nonpayment of any license fees;

(k) If the licensee has become ineligible to obtain a license;

(l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

Sec. 6-73. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the District Court of Cowley County and the District Court shall proceed to hear such appeal as though such Court had original jurisdiction in the matter. Any appeal taken shall not suspend the order of revocation of the license or any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

Sec. 6-74. CHANGE OF LOCATION. If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee specified in Section 34-6. If the application is in proper form and the location is not in a prohibited zone and all other requirements

relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

Sec. 6-75. WHOLESALERS AND/OR DISTRIBUTORS. It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver enhanced cereal malt beverages within the City, to persons authorized to sell the same within this City unless such wholesaler and/or distributor has first secured a license from the Director of Revenue, State Commission of Revenue and Taxation of the State of Kansas authorizing such sales.

Sec. 6-76. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations:

(a) The place of business licensed, and operating shall at all times have a front and rear exit unlocked when open for business.

(b) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the City, County and State.

(c) Except as provided by subsection (d), no enhanced cereal malt beverages may be sold or dispensed: (1) Between the hours of 12:00 midnight and 6:00 a.m.; (2) in the original package before 12:00 noon or after 8:00 p.m. on Sunday; (3) on Easter Sunday; (4) for consumption on the licensed premises on Sunday, except in a place of business which is licensed to sell enhanced cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises; or (5) sale and consumption at Quail Ridge Golf Course is allowed.

(d) Enhanced cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 410-2601 *et seq.* and amendments thereto, and licensed as a club by the State Director of Alcoholic Beverage Control.

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of enhanced cereal malt beverage to any person under 21 years of age.

(i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued.

(j) No licensee or agent or employee of the licensee shall permit any person to mix

alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee or agent or employee of the licensee shall employ any person under 18 years of age in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

(l) No private functions, parties or other similar gatherings shall be held in any tavern at any time. No private rooms or closed booths shall be operated in any tavern or place of business. The premises shall be open to public view at all times, and windows shall be of the minimum size of 24 inches in width by 24 inches in length, uncovered, and the entire room well lighted; provided that this provision shall not apply if the licensed premises are also currently licensed as a club under a license issued by the Director.

Sec. 6-77. PROHIBITED CONDUCT ON PREMISES. The following conduct by an enhanced cereal malt beverage licensee, manager or employee of any licensed enhanced cereal malt beverage establishment is deemed contrary to public welfare and is prohibited:

(a) Remaining or permitting any person to remain in or upon the premises who exposes to view any portion of the female breasts below the top of the areola or any portion of male's/female's pubic hair, anus, buttocks or genitals;

(b) Permitting any employee on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any other employee or any patron;

(c) Encouraging or permitting any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva, or genitals of any employee;

(d) Performing or permitting any person to perform on the licensed premises acts of or acts which simulate:

(1) Sexual intercourse, masturbation, sodomy, or any other sexual act which is prohibited by law; or

(2) Touching, caressing or fondling such person's breasts, buttocks, anus or genitals.

(e) Using or permitting any person to use on the licensed premises, any artificial devices or inanimate objects to depict any of the acts prohibited by paragraph (d).

(f) Showing or permitting any person to show on the licensed premises any motion picture, film, photograph, electronic reproduction, or other visual reproduction depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, or any sexual act which is prohibited by law;

(2) the touching, caressing or fondling of the buttocks, anus, genitals or the female breasts;

(3) Scenes in which a person displays the buttocks, anus, genitals or the female breasts.

(g) The term premises means the premises licensed by the City as an enhanced cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that

activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

Sec. 6-78. PROMOTIONS AND CONTESTS.

(a) No retailer, or employee or agent of a retailer, licensed to sell enhanced cereal malt beverage for consumption on the premises, shall:

- (1) Offer to serve any free enhanced cereal malt beverage in any form to any person;
- (2) Offer to serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee or permit holder;
- (3) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;
- (4) Encourage or permit, on the licensed premises, any game or contest which involves drinking enhanced cereal malt beverage or the awarding of drinks as prizes; or
- (5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (a)(4) of this Section.

(b) A retailer may:

- (1) Offer free food or entertainment at any time;
- (2) Sell, offer to sell, and serve individual drinks at different prices throughout any day; or
- (3) Sell or serve beer or enhanced cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.

(c) Any person violating any provision of this Section shall be deemed guilty of a misdemeanor. Conviction of violating this Section shall also be grounds for suspension or revocation of the retailer's license as provided by Section 6-68.

(d) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all enhanced cereal malt beverages.

Sec. 6-79. SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be

kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the City health officer of designee.

Sec. 6-80. TEMPORARY ENHANCED CEREAL MALT BEVERAGE OR BEER LICENSE.

(a) A temporary license may be issued which shall allow the license holder to offer for sale, sell and serve enhanced cereal malt beverage or beer for consumption on otherwise unlicensed premises, which may be open to the public.

(b) A temporary license shall be issued for the duration of the temporary event, the dates of which shall be specified in the license, but in no event shall exceed three consecutive days.

(c) No more than four temporary licenses shall be issued to the same applicant in a calendar year.

(d) All requirements regarding and regulations relating to an annual license, including but not necessarily limited to, the ability to obtain and maintain an annual license, and hours of sale shall apply equally to a temporary license.

(e) *Fee.* There is hereby levied a temporary enhanced cereal malt beverage fee fixed in Section 34-6 for each group or individual holding such license which shall be paid prior to license issuance.

Section 3. This ordinance shall be published at least once each week for two consecutive weeks in the official City newspaper.

Section 4. This ordinance shall take effect and be in force from and after April 1, 2019, with the exception of Section 6-76(c) which will not take effect until June 1, 2019, unless said Section is vetoed by public vote, pursuant to K.S.A. 41-2911 (b)(1)

ADOPTED this 18th day of March, 2019.

CITY OF WINFIELD, KANSAS

By _____
Ronald E. Hutto, Mayor

ATTEST:

Carina Anderson, Deputy City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Brenda Peters, Interim City Manager