

ORDINANCE NO.3093

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF ELLSWORTH, KANSAS AND REPEALING CITY CODE ARTICLE 5.12.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ELLSWORTH:

Section 1. DEFINITIONS.

As used in this Ordinance, the words and phrases defined in this section shall have the following meanings unless the context otherwise requires:

“Enhanced Cereal Malt Beverage” includes 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.

“General Retailer” is a licensee who has a license to sell only Enhanced Cereal Malt Beverages for consumption on the premises only.

“Licensee” is a “person” as defined in this Ordinance who has a license as required by this Ordinance.

“Limited Retailer” is a licensee who has a license to sell only at retail Enhanced Cereal Malt Beverages in original and unopened containers, and not for consumption on the premises.

“Minor” is a person under twenty-one (21) years of age.

“Person” includes individuals, firms, partnerships, corporations and associations.

“Place of Business” is any place at which Enhanced Cereal Malt Beverages are sold.

“Premises” is the site licensed by the City as an Enhanced Cereal Malt Beverage establishment and such other areas, under the control of the licensee or his/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.

“Sale at Retail” and “Retail Sale” mean sales for consumption on the premise and not for resale in any form.

“Wholesaler or Distributor” means individuals, firms, co-partnerships, corporations and associations which sell or offer for sale any beverages referred to in this section, to persons, co-partnerships, corporations and associations authorized by this Ordinance to sell Enhanced Cereal Malt Beverages at retail.

Section 2. LICENSE ISSUED BY CITY.

A “Cereal Malt Beverage License” issued by the City of Ellsworth 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.

Section 3. 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 General Retailer to sell Enhanced Cereal Malt Beverages in the original and unopened containers and not for consumption on the premises.

Section 4. 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 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 of America and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, been adjudged guilty of drunkenness, 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 of America;
- f) 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.

Section 5. 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 an existing licensee 30 days in advance of its expiration.
- (c) The City Clerk's Office shall provide copies of all applications to the Chief of Police or his/her designee when they are received. The Chief of Police, or his/her designee, will run a record check on all applicants and inspect the premises. The Chief of Police or his/her designee will then recommend approval, or disapproval, of applications within five working days of the receipt of the application.
- (d) The application shall be scheduled for consideration by the Governing Body at the

earliest meeting consistent with current notification requirements.

- (e) The Governing Body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above City Departments.
- (f) 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.

Section 6. LICENSE FEE.

The rules and regulations regarding license fees shall be as follows:

- (a) General Retailer - for each place of business selling Enhanced Cereal Malt Beverages at retail shall pay an annual, per calendar year license fee in accordance with the City of Ellsworth Fee Schedule in effect at the time of the licensing.
- (b) Limited Retailer - for each place of business selling only at retail Enhanced Cereal Malt Beverages in original and unopened containers and not for consumption on the premises shall pay annual, per calendar year license fee in accordance with the City of Ellsworth Fee Schedule in effect at the time of the licensing
- (g) 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.

Section 7. 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 Ellsworth County for at least six months prior to filing of such application;
- (b) A person who is not a citizen of the United States of America;
- (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, has been adjudged guilty of drunkenness, 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 of America;
- (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, of 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 the State of Kansas;
- (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 (i) shall not apply in determining eligibility for a renewal license.

Section 8. LICENSE GRANTED; DENIED.

- (a) The Journal 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.

Section 9. LICENSE TO BE POSTED.

Each license shall be posted in a conspicuous location in the place of business for which the license is issued.

Section 10. 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.

Section 11. 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, free from all flies, rodents and vermin and shall at all times be open to inspection by the Chief of Police, or his/her designee, or Health Officers of the City, County and State.

- (c) The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lit, and be furnished at all times with toilet paper and paper towels or other mechanical means of drying hands and face. The doors of all toilet rooms shall be self-closing. In restrooms for women easily cleanable receptacles shall be provided for waste material and such receptacles 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 Chief of Police, or his/her designee.
- (d) Except as provided by subsection (d), no Cereal Malt Beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 A.M., or consumed between the hours of 12:30 A.M., and 6:00 A.M., or on Sunday, except in a place of business which is licensed to sell Cereal Malt Beverages for consumption on the premises, which derives not less than 30 percent of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614 and amendments thereto.
- (e) 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. 41-2601, et seq. and amendments thereto, and licensed as a club by the State Director of Alcoholic Beverage Control.
- (f) The place of business shall be open to the public and to the Police Department 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 Department and not to the public.
- (g) 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.
- (h) 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.
- (i) No licensee or agent or employee of the licensee shall sell or permit the sale of Cereal Malt Beverage to a minor.
- (j) 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.
- (k) 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.
- (l) No licensee or agent or employee of the licensee shall employ any person under 18 years of age in dispensing Cereal Malt Beverages.
- (m) No licensee shall employ any person who has been judged guilty of a felony.

Section 12. PROHIBITED CONDUCT ON PREMISES.

The following conduct by a Cereal Malt Beverage licensee, manager or employee of any

licensed 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 males/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 patron 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 on the licensed premises to perform acts of or acts which simulate:
 - (1) Sexual intercourse, masturbation, sodomy, or any other sexual act which is prohibited by law;
 - (2) Touching, caressing or fondling such persons' breasts, buttocks, anus or genitals.
- (e) Using or permitting on the licensed premises any person to use, 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.

Section 13. RESTRICTION UPON LOCATION.

- (a) No license shall be issued for the sale at retail of any Enhanced Cereal Malt Beverage on premises which are located in areas not zoned for such purpose.
- (b) It shall be unlawful to sell or dispense at retail any Enhanced Cereal Malt Beverage at any place within a 200-foot radius of any church, school or library.
- (c) Provisions shall not apply to any establishment holding a Private Club License issued by the State of Kansas.
- (d) The distance limitation of subsection (b) above shall not apply to any establishment holding an Enhanced Cereal Malt Beverage License issued by the City when the licensee has petitioned for and received a waiver of the distance limitation. The Governing Body shall grant such a waiver only following public notice and hearing.

As approved by the rules and regulations adopted for the operation of the Ellsworth Recreation Center and the Ellsworth Municipal Golf Course respectively, and the Standard Operating Procedures of the Ellsworth Volunteer Fire Department it shall be lawful to drink or consume Enhanced Cereal Malt Beverages at such times and in such places within the confines of buildings and/or properties of:

- (a) The Ellsworth Recreation Center located at 221 W. Douglas Avenue;
- (b) The Ellsworth Municipal Golf Course located at 900 E. Second Street;
- (c) The Ellsworth Fire Station located at 100 N. Court Avenue.

City Council is hereby authorized to grant exceptions to said prohibition upon the request of a person or organization for a special public event. The application shall:

- (a) be in writing specifying the time, place and nature of the special event
- (b) include proof of liability insurance covering the consumption of cereal malt beverages on public property with the person or organization and the City named as insured parties.

City Council may place reasonable restrictions on such possession and consumption in terms of location and duration of the event and measures to ensure compliance with other applicable Ordinances. The person or organization granted the exception shall comply with all applicable Ordinances and State laws regarding licenses and permits.

It is unlawful for any person to possess or consume Enhanced Cereal Malt Beverages on a private parking lot or such other property not open to public use or access of a business nature unless the person owns, rents or leases the property or has permission either express or implied to be thereon. It shall be the burden of the person charged under this paragraph to establish such ownership, interest or permission to avoid the penalties of this paragraph.

Section 14. CHANGE OF LOCATION.

If a licensee desires to change the location of his/her place of business, he or she shall:

- (a) make an application to the Governing Body showing the same information relating to the proposed location as in the case of an original application;
- (b) such application shall be accompanied by a fee in accordance with the City of Ellsworth Fee Schedule in effect at the time of the licensing.

If the application is in proper form and the location is not in a prohibited location 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.

Section 15. SUSPENSION OF LICENSE.

The Chief of Police or his/her designee, 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/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.

Section 16. 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 Beverage shall cause to be suspended for a period of not more than 30 days or permanently revoke such license for any of the following reasons:

- (a) the licensee has fraudulently obtained the license by giving false information in the application therefor;
- (b) 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;
- (d) the licensee, his/her manager or employee permitting any intoxicated person to remain in such premises selling Enhanced Cereal Malt Beverages;
- (e) sale of Enhanced Cereal Malt Beverages to a minor;
- (f) permitting any gambling in or upon any premises licensed;
- (g) permitting any person to mix drinks with materials purchased in any premises licensed or brought into the premises for this purpose;
- (h) employment of any person under the age established by the State of Kansas for employment involving dispensing Enhanced Cereal Malt Beverages;
- (i) employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;
- (j) sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed;
- (k) nonpayment of any license fees;
- (l) licensee has become ineligible to obtain a license;
- (m) provisions of subsections (g) and (j) shall not apply if such place of business is also currently licensed as a private club.

Section 17. SAME; APPEAL.

The licensee, within 20 days after the order of the Governing Body revoking any license,

may appeal to the District Court of Ellsworth 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 of any licensee, nor shall any new license be issued to such person or any person acting for or on his/her behalf, for a period of six months thereafter.

Section 18. A Summary of this Ordinance shall be published one time in the Ellsworth County Independent Reporter.

Section 19. This Ordinance shall take effect and be in force from and after April 1, 2019.

PASSED AND APPROVED this 11th day of March, 2019.

Alan M. Stefek
Mayor

SEAL

ATTEST:

Patti L. Booher, CMC
City Clerk