

(Summary Publish in the Leavenworth Times on March 29, 2019)

ORDINANCE NO. 8098

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS, CHAPTER 10, ALCOHOLIC BEVERAGES AND CEREAL MALT BEVERAGES, PROVIDING SUBSTITUTE PROVISIONS AND REPEALING THE CHAPTER AMENDED.

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

Section 1. That the Code of Ordinance of the City of Leavenworth, Kansas, Chapter 10, Alcoholic Beverages and Cereal Malt Beverages, is hereby deleted in its entirety and amended to read as follows:

Chapter 10 - ALCOHOLIC BEVERAGES AND CEREAL MALT BEVERAGES

ARTICLE I. – DEFINITIONS AND GENERAL PROVISIONS

Sec. 10-1. – Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

Alcoholic liquor means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

Beer, when its meaning is not enlarged, modified or limited by other words, means a beverage containing more than 3.2 percent of alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter and the like having such alcoholic content.

Board means the state alcoholic beverage control board of review.

Caterer means an individual, partnership or corporation which sells alcoholic liquor by the individual drink and provides services related to the serving thereof on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit selling alcoholic liquor in accordance with the terms of such permit.

Cereal malt beverage or *CMB* means any fermented but undistilled liquor brewed or made from malt or from malt or from a mixture of malt or malt substitute, or any flavored malt beverage, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

Class A club means premises which are owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (referred to in this article as "members"), and their families and guests accompanying them.

Class B club means premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

Club means a class A or class B club.

Director means the state director of alcoholic beverage control.

Distributor means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this Chapter, or cereal malt beverage or enhanced cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2701 and amendments thereto.

Domestic table wine means wine which contains not more than 14 percent alcohol by volume and which is manufactured without rectification or fortification from agricultural products grown in this state.

Drinking establishment has the meaning provided by K.S.A. 41-2601 and amendments thereto.

Enhanced cereal malt beverage means cereal malt beverage, as defined herein, and such term shall also 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 and the provisions of this Chapter.

Farm winery means a winery licensed by the director to manufacture, store and sell domestic table wine.

Food establishment has the meaning provided by K.S.A. 65-656 and amendments thereto.

General retailer means a person who has a license to sell enhanced cereal malt beverages at retail.

Legal age for consumption of enhanced cereal malt beverage means 21 years of age, except that legal age for consumption of cereal malt beverage shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

Limited Retailer means a person who has a license to sell enhanced cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer, enhanced cereal malt beverage, or cereal malt beverage.

Manufacturer means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package, and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors, beer, enhanced cereal malt beverage, or cereal malt beverage, regardless of its alcoholic content. *Manufacturer* does not include a farm winery or a microbrewery.

Microbrewery means a brewery licensed by the director to manufacture, store and sell domestic beer.

Microdistillery means a facility which produces spirits from any source or substance that is licensed by the director to manufacture, store and sell spirits.

Minor means any person under 21 years of age.

Nonbeverage User means any manufacturer of any of the products set forth and described in K.S.A. 41-501 and amendments thereto, when the products contain alcohol or wine, and all laboratories using alcohol for non-beverage purposes.

Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor.

Person means any natural person, corporation, partnership or association.

Place of Business means any place at which cereal malt beverages, enhanced cereal malt beverages, or alcoholic beverages or both are sold.

Retailer means a person who sells, at retail, or offers for sale at retail, alcoholic liquors, but does not include a microbrewery, microdistillery, or farm winery.

Sale means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether as principal, proprietor, agent, servant or employee.

Salesperson means any natural person who:

- (1) Procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage; or
- (2) Is engaged in promoting the sale of alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of

alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage, whether the seller resides within the state of Kansas and sells to licensed buyers within the state of Kansas, or whether the seller resides without the state of Kansas and sells to licensed buyers within the of Kansas.

Sell at retail and *sale at retail* means and refers to sales for use or consumption and not for resale in any form, and sales to clubs, licensed drinking establishments, licensed caterers, or holders of temporary permits. *Sell at retail* and *sale at retail* do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer, or a holder of a state temporary permit.

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 spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substance.

Supplier means a manufacturer of alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage or an agent of such manufacturer, other than a salesperson.

Temporary permit means a permit issued in accordance with the laws of the State of Kansas, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises open to the public.

To sell means and includes to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell.

Wholesaler or distributor means any individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this Chapter, to persons, copartnerships, corporations and associations authorized by this chapter to sell enhanced cereal malt beverages or cereal malt beverages at retail.

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

Sec. 10-2. - City-owned properties, generally.

- (a) It shall be unlawful for any person to have any alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage in his or her possession upon any public street, highway, alley, sidewalk, inside vehicles, or any other public property unless such alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage is in the original unopened package or 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 except as authorized hereinafter.
- (b) No person shall drink or consume any alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage upon the public streets, alleys, sidewalks, roads or highways of the city or inside vehicles while upon such public streets, alleys, sidewalks, roads or highways,

or in City-owned parks or other facilities or properties, unless authorized as provided in this section.

- (c) The above prohibitions shall not apply during events and the designated areas for such events in the City where:
 - (1) a special event CMB permit has been approved in accordance with Article II of this Chapter; or
 - (2) a temporary permit has been approved in accordance with Article III, and the event has been approved by the governing body in accordance with K.S.A. 41-719.

- (d) Notwithstanding the foregoing, and pursuant to K.S.A. 41-719(e), as amended, the drinking or consumption of alcoholic liquor is permitted on the following City-owned properties and facilities without further approval from the governing body, provided that a temporary permit or a caterer's license has been approved in accordance with Article III:
 - (1) The Community Center located on North Esplanade north of Cherokee Street.
 - (2) The Leavenworth Landing Park located east and south of above described Community Center.
 - (3) The Haymarket Square, located at 7th and Cherokee.
 - (4) The Havens Park, located at 22nd and Ottawa.
 - (5) The Riverfront Park, located at the east end of Dakota Street.
 - (6) Ray Miller Park, located at the corner of 4201 South 4th Street.
 - (7) Leavenworth Public Library, located at 417 Spruce Street.
 - (8) Performing Arts Center, 500 Delaware Street.

- (e) Notwithstanding the foregoing, cereal malt beverages are allowed to be possessed and consumed (but not served or sold) at city parks with a permit issued by the director of parks and recreation, subject to the following requirements:
 - (1) The premises must have been rented from the City by the applicant; in advance;
 - (2) Applicant must be 21 years of age or older and a Leavenworth area resident. Applicant is required to remain on the site throughout the function.
 - (3) Applications must be submitted to the parks and recreation office at least five (5) working days prior to the event.
 - (4) The director of parks and recreation will notify the police department prior to the permitted event.
 - (5) Permits may only be issued for the following types of activities:
 - a. Company picnics.
 - b. Fraternal organization picnics.
 - c. Service club picnics.
 - d. Family reunions.
 - e. Other group functions, subject to the discretion of the director of parks and recreation.

The sale or service of cereal malt beverages on or from City-owned properties shall otherwise require a full cereal malt beverage license or a special event CMB permit.

- (f) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50.00 nor more than \$200.00 or by imprisonment for not more than six months, or by both such fine and imprisonment.

Sec. 10-3. – Possession and consumption restrictions.

- (a) No person under 21 years of age shall obtain or purchase, or attempt to obtain or purchase, alcoholic liquor or enhanced cereal malt beverages from any person except as authorized by law. Violation of this subsection 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 and not more than \$250.00 or by 40 hours of public service, or by both.
- (b) No person under 21 years of age shall possess or consume alcoholic liquor or enhanced cereal malt beverages except as authorized by law. Violation of this subsection by a person 18 or more years of age, but less than 21 years of age, is a misdemeanor punishable:
 - (1) By a fine of not less than \$100.00 and not more than \$250.00 or by 40 hours of public service, or by both, if committed on premises licensed pursuant to K.S.A. 41-2601 *et seq.*, as amended; or
 - (2) By a fine of not less than \$25.00 and not more than \$250.00 or by ten hours of public service, or by both, if committed on any other premises.
- (c) Any person less than 18 years of age who violates subsections (a) or (b) of this section is a juvenile offender under the state juvenile offenders code and, upon adjudication thereof, shall be required as a condition of disposition to pay the fine or perform the public service, or both, specified as punishment for the offense under subsection (a) or (b).
- (d) No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of, any alcoholic liquor or enhanced cereal malt beverages to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor. Violation of this subsection is a misdemeanor punishable by a fine of not less than \$100.00 and not exceeding \$250.00 or imprisonment not exceeding thirty (30) days, or both.
- (e) No person except a manufacturer, distributor, microbrewery, farm winery or wholesaler shall fill or refill, in whole or in part, any original package of alcoholic liquor or enhanced cereal malt beverages with the same or any other kind or quality of alcoholic liquor. No person shall have in the person's possession for sale at retail any bottles, casks or other containers containing alcoholic liquor or enhanced cereal malt beverages, except in original packages.

Sec. 10-4. - Minors on premises of business.

Except as otherwise provided in this Chapter as to enhanced cereal malt beverages:

- (1) It shall be unlawful for any person under the age of 21 years to remain on any premises where the sale of alcoholic liquor is licensed for on-premises consumption.

- (2) It shall be unlawful for the operator, person in charge, or licensee of any premises licensed for on-premises consumption of alcoholic liquor to permit any person under the age of 21 years to remain on the premises.
- (3) This section shall not apply if the person under the age of 21 years is accompanied by his parent or guardian, or if the licensed or permitted premises derives not less than thirty percent (30%) of its gross receipts from the sale of food for consumption on the licensed premises, or where a caterer, farm winery, microbrewery, or temporary permit holder is serving alcoholic liquor.

Sec. 10-5. - Possession and transportation.

Subject to the limitations provided in this section, the possession and transportation of alcoholic liquor for other than personal use shall be unlawful.

- (1) No person shall transport in any vehicle upon a highway or street any alcoholic liquor or enhanced cereal malt beverage unless such liquor or beverage is:
 - a. In the original unopened package or 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 in motion; or
 - c. In the exclusive possession of a passenger in a vehicle which is a recreational vehicle, as defined by K.S.A. 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.

Violation of this subsection is a misdemeanor punishable by a fine of not more than \$200.00 or by imprisonment for not more than six months, or both.

- (2) It shall be unlawful for any person to transport any alcoholic liquor upon which the tax imposed by the state liquor control act has not been paid or on the containers of which each mark and stamp required by the state liquor control act has not been affixed; provided, that nothing contained in this subsection shall make unlawful the possession and transportation of wine imported solely for use by any church or religious organization for sacramental purposes and uses. Any person who shall violate any of the provisions of this subsection shall, upon conviction thereof, be fined not exceeding \$500.00, or shall be imprisoned not exceeding six months, or both, in the discretion of the court; and in proper cases, the court may order and direct the confiscation of the liquor involved in such transaction as part of the judgment or conviction.

Sec. 10-6. - Open saloons.

It shall be unlawful for any person to own, maintain, operate or conduct, either directly or indirectly, an open saloon within the corporate limits of the city. As used in this section, "open

saloon" means any place, public or private, where alcoholic liquor or enhanced cereal malt beverage is sold or offered or kept for sale by the drink or in any quantity of less than 100 milliliters (3.4 fluid ounces) or sold or offered or kept for sale for consumption on the premises where sold, but does not include any premises where the sale of liquor is authorized by the club and drinking establishment act, as amended, or any manufacturer, microbrewery, microdistillery, or farm winery, if authorized by Kansas statute, or any premises where the sale of enhanced cereal malt beverages are authorized by this Chapter. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.00, and by imprisonment for not more than ninety (90) days.

Sec. 10-7. - Revocation; penalties.

- (a) The governing body upon five (5) days' notice to the person holding a license or permit under this Chapter may revoke such license for any one of the following reasons:
 - (1) If a licensee or permit holder has fraudulently obtained the license by giving false information in the application therefor.
 - (2) If the licensee or permit holder has violated any of the provisions of this Chapter or any other rules or regulations of the City relating to alcoholic liquor or enhanced cereal malt beverages, or if the licensee or permit holder has violated any law of the state for which violation the City is authorized by law to revoke the license.
 - (3) If the licensee or permit holder has become ineligible to obtain a license or permit under this Chapter.
 - (4) Drunkenness of a person holding such license or permit, drunkenness of a licensee's or permittee's manager or employee while on duty and while on the premises for which the license or permit is issued, or for a licensee or permittee, his or her manager or employee permitting any intoxicated person to remain in such place selling alcoholic liquor.
 - (5) The nonpayment of any license or permit fees or occupation tax.

Additionally, the Police Chief or his/her designee make immediately cancel a temporary permit or a special event CMB permit if the event becomes unruly or if the or permit holder has violated any of the provisions of this Chapter.

- (b) The licensee, within twenty (20) days after the order of the governing body revoking any license or permit, may appeal to the district court of Leavenworth County and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken under this section shall not suspend the order of revocation of the license or permit of any licensee or permittee, nor shall any new license or permit be issued to such person or any person acting for or on his or her behalf, for a period of six (6) months thereafter.
- (c) In addition to the provisions of Section 10-7(a) above, if the licensee or permit holder has violated any of the provisions of this Chapter, the individual holding the license or permit

may be charged in municipal court with a violation of the alcoholic liquor laws of the city and, upon conviction, shall be punished by:

- (1) A fine of not more than \$499.00;
- (2) Imprisonment in jail for not more than 179 days; or
- (3) Both such fine and imprisonment.

Secs. 10-8—10-25. - Reserved.

ARTICLE II. - CEREAL MALT BEVERAGES

DIVISION 1. - RETAILERS.

Sec. 10-26. – License required of retailers.

- (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.
- (c) The "cereal malt beverage license" issued by the City pursuant to this Article authorizes the sale of enhanced cereal malt beverages by those retailers in compliance with this Article and such other laws and regulations that may apply.

Sec. 10-27. - Application.

- (a) 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:
 - (1) The name and residence of the applicant and how long he or she has resided within the State of Kansas;
 - (2) The particular place for which a license is desired;
 - (3) The name of the owner of the premises upon which the place of business is located;
 - (4) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired;
 - (5) 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 (2) years immediately preceding the date of making 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.
- (b) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of Chapter 54 of this Code.

- (c) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of Chapter 50 of this Code.
- (d) 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 clerk not later than five (5) 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. 10-28. - License application procedures.

- (a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk ten (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 thirty (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 records check on all applicants and the fire department and health department will inspect the premises in accord with Chapters 50 and 54 of this Code. The departments will then recommend approval, or disapproval, of applications within five (5) working days of the department's receipt of the application.
- (d) The governing body will not consider any application for a new or renewed license that has not been submitted ten (10) days in advance and been reviewed by the above city departments.
- (e) An applicant who has not had a cereal malt beverage license or enhanced cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.
- (f) Pursuant to K.S.A. 41-2703a, as amended, any limited liability company applying for a license under the Kansas cereal malt beverage act shall submit a copy of its articles of organization and operating agreement to the director in such form and manner as prescribed by the director.

Sec. 10-29. – License fees; term.

- (a) The license fees for selling enhanced cereal malt beverages shall be as prescribed in appendix F. Such fee shall be in addition to such fees as are to be remitted to the Division

of Alcohol Beverage Control pursuant to K.S.A. 41-2701, as amended. License fees are non-refundable and non-transferable.

- (b) The full amount of the license fee shall be required regardless of the time of 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. 10-30. - Examination; approval; disqualification.

If the application made under this Article is in proper form and accompanied by the license fee, the governing body shall examine the application, and if the applicant is qualified as provided by law the governing body shall approve the granting of a license to the applicant; provided, that no license shall be issued to:

- (1) A person who has not been a resident in good faith of the state of Kansas for at least one (1) year immediately preceding application and a resident of Leavenworth County for at least six (6) months prior to filing of such application.
- (2) A person who is not a citizen of the United States.
- (3) A person who is not of good character and reputation in the community in which he or she resides.
- (4) A person who, within two (2) 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.
- (5) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.
- (6) A corporation or a limited liability company if any member, manager, officer or director thereof, or any stockholder or member owning in the aggregate more than twenty-five percent (25%) of the stock or the ownership interests of such corporation or limited liability company would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.
- (7) A corporation or a limited liability company, if any member, manager, officer or director thereof, or any stockholder or member owning in the aggregate more than twenty-five percent (25%) of the stock or the ownership interests of such corporation or limited liability company, has been an officer, manager or director, or a stockholder owning in the aggregate more than twenty-five percent (25%) of the stock or the ownership interests of a corporation or limited liability company 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.

- (8) 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.
- (9) 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 (9) shall not apply in determining eligibility for a renewal license.

Sec. 10-31. - Issuance; transfer; posting.

If the license is granted, the governing body shall direct the city clerk to issue a license by order of the governing body, and the minutes of the governing body shall show the action taken. The license shall not be transferable. The license shall state that it is not transferable and shall also show the calendar year for which it is issued. The license shall be kept posted in a conspicuous place in the licensee's place of business.

Sec. 10-32. – Restrictions upon location.

- (a) No license shall be granted to sell at retail enhanced cereal malt beverages on premises which are located in areas not zoned for such purpose, or if the premises do not comply with other city laws, including building and health codes.
- (b) No license shall be granted to sell at retail enhanced cereal malt beverages at any place of business or location within 300 feet of any public or parochial school, college, church, nursing home, library or hospital; provided, that if any such facility shall be established within 300 feet after such premises have been licensed, then such premises shall be an eligible location for licensing. The distance shall be measured from the nearest property line of the school, college, church, nursing home, library or hospital to the nearest portion of the building occupied by the business selling or serving the beverages.
- (c) The prohibition set out in subsection (b) of this section shall not apply to properties that are located in the Central Business District or areas zoned General Business District, or to establishments located within the 300-foot limit as of the latest effective date of this section, so long as the license is and has been continuously held without allowing cancellation or lapse for a period of thirty (30) days or more.
- (d) The prohibition set out in subsection (b) of this section shall further not apply to any business that obtains an enhanced cereal malt beverage, club, drinking establishment, caterer, temporary permit, farm winery, or microbrewery license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation from the governing body. The governing body shall grant such waiver only following notice to property owners within such 300-foot distance (in such manner as the city may require) and a public hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.

Sec. 10-33. – 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 equal to the amount of the application or license fee then charged by the City. 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. 10-34. – Suspension of license.

The chief of police, upon five (5) days written notice, shall have the authority to suspend such license for a period not to exceed thirty (30) days, for any violation of the provisions of this chapter or other laws pertaining to cereal malt beverages or 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 (7) days from the date of such order.

Sec. 10-35. – General conduct of business.

- (a) The holder of a license under the provisions of this Article shall conduct the business in an orderly manner, and it shall be unlawful for any licensee or agent or employee of the licensee to allow intoxicated persons to remain in such place of business or serve any enhanced cereal malt beverages to any intoxicated persons. 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.
- (b) The place of business licensed and operating under this article shall at all times have a front and rear exit unlocked when open for business. The place of business shall be open to the public and police at all times during business hours and no private rooms or booths shall be operated in any place of business; 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.

Sec. 10-36. - Business regulations.

- (a) It shall be unlawful for a licensee to:
 - (1) Permit any person to mix drinks in or on the licensed premises, or to permit any person to mix drinks with materials purchased in the place of business or brought in for such purpose;
 - (2) Employ any person under the age established by the State of Kansas for employment involving dispensing enhanced cereal malt beverages;
 - (3) Employ any person in who has been adjudged guilty of a felony or of any violation of the intoxicating liquor law;
 - (4) Permit any gambling on the premises;

- (5) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring, or consumption of any enhanced cereal malt beverages to any person under the legal age for consumption of enhanced cereal malt beverages;
 - (6) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring, or possession or consumption of alcoholic liquor within or upon any premise licensed under this Article.
- (b) The provisions of subsections (a)(1) and (6) above shall not apply if the place of business or premises are also currently licensed as a club under a license issued by the state director of alcoholic beverage control.

Sec. 10-37. - Minors on premises; loitering by underaged persons

- (a) No license under this article shall permit a person under the legal age for consumption of enhanced cereal malt beverages in or about a place of business, and no licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage to possess an enhanced cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than 18 years of age may dispense or sell enhanced cereal malt beverage if:
- (1) The licensee's place of business is licensed only to sell enhanced cereal malt beverage at retail in original and unopened containers and not for consumption on the premises; or
 - (2) The licensee's place of business is a licensed food establishment, and not less than thirty percent (30%) of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.
- (b) No person under the legal age for consumption of enhanced cereal malt beverages shall loaf or loiter or consume any enhanced cereal malt beverage in any place of business in the City for which an enhanced cereal malt beverage license for consumption on the premises has been issued.

Sec. 10-38. – Days and hours of operation.

- (a) Except as provided by subsection (b), no enhanced cereal malt beverages may be sold or dispensed: (i) between the hours of 12:00 midnight and 6:00 a.m.; (ii) in the original package before 12:00 noon or after 8:00 p.m. on Sunday; (iii) on Easter Sunday; or (iv) 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 thirty percent (30%) of its gross receipts from the sale of food for consumption on the licensed premises.
- (b) 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. 41-2701 *et seq.*, and licensed as a club by the State Director of Alcoholic Beverage Control.

Sec. 10-39. - 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 or designee.

Sec. 10-40. – Windows and doors; regulation of electric signs and loudspeakers.

The windows and doors of every place within the City selling or dispensing enhanced cereal malt beverages shall be free and clear of any obstruction, either temporary or permanent, which may interfere with or shut off the view from the street of the inside of such place, and such place shall be kept clean, well ventilated and brightly lighted at all times when open for use. All signs shall comply with the City's sign regulations, as may be amended from time to time. There shall not be any loudspeakers from any musical instrument attached to the outside of any licensee's premises.

Sec. 10-41. - State license for wholesalers and distributors.

It shall be unlawful for any wholesaler or distributor, or agent or employee thereof, to sell or deliver enhanced cereal malt beverages within the city to persons authorized under this article to sell enhanced cereal malt beverages within the city unless such wholesaler 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.

Secs. 10-42—10-60. - Reserved.

DIVISION 2. – SPECIAL EVENT CEREAL MALT BEVERAGE PERMITS.

Sec. 10-61. – Permit required.

It shall be unlawful for any person to sell or serve any Cereal Malt Beverage at any special event within the city without first obtaining a special event Cereal Malt Beverage permit from the city clerk.

Sec. 10-62 – Application; City-owned properties.

- (a) It shall be unlawful for any person to sell or serve Cereal Malt Beverage at a special event without first applying for a special event Cereal Malt Beverage permit at least fourteen (14) days before the event. Written application for the special event CMB permit shall be made to the city clerk on the form used for annual cereal malt beverage sales or, when available, the special event Cereal Malt Beverage permit application approved by the Attorney General, as directed by the city clerk. In addition to any other information required, the applicant shall provide the following:
- (1) The name of the applicant (applicant must be 21 years of age or older and a Leavenworth area resident; applicant is required to remain on the site throughout the function);
 - (2) The group for which the event is planned;
 - (3) The location of the event;
 - (4) The date and time of the event;
 - (5) Any anticipated need for police, fire or other municipal services.
- (b) Notwithstanding the provisions of Section 10-2 above, a special event Cereal Malt Beverage permit may be issued by the city clerk for the following City-owned properties and facilities:
- (1) The Community Center located on North Esplanade north of Cherokee Street.
 - (2) The Leavenworth Landing Park located east and south of above described Community Center.
 - (3) The Haymarket Square, located at 7th and Cherokee.
 - (4) The Havens Park, located at 22nd and Ottawa.
 - (5) The Riverfront Park, located at the east end of Dakota Street.
 - (6) Ray Miller Park, located at the corner of 4201 South 4th Street.
 - (7) Leavenworth Public Library, located at 417 Spruce Street.
 - (8) Performing Arts Center, 500 Delaware Street.

Sec. 10-63 – Fee; display of receipt.

- (a) There is hereby levied a special event Cereal Malt Beverage permit fee in the amount as set out in appendix F on each group or individual, which fee shall be paid before the event is begun. Such fee shall be in addition to the \$25.00 fee to be remitted to the Division of Alcohol Beverage Control pursuant to K.S.A. 41-2701, as amended. Permit fees are non-refundable and non-transferable.

- (b) Every special event Cereal Malt Beverage permit holder shall cause the permit receipt to be placed in plain view on any premises within the city where the holder of the special event CMB permit is serving Cereal Malt Beverage for consumption on the premises.

Sec. 10-64 – Issuance.

Upon meeting the requirements to obtain a special event Cereal Malt Beverage permit, payment of the city's permit fee, and a written application as provided for in section 10-63, the city clerk shall issue a special event Cereal Malt Beverage permit to the applicant if there are no conflicts with any zoning or other ordinances of the city. The city clerk shall notify the chief of police whenever a special event Cereal Malt Beverage permit has been issued and forward a copy of the permit and application to the chief of police.

Sec. 10-65. - Restrictions.

- (a) No special event Cereal Malt Beverage permit holder shall allow the serving or consumption of Cereal Malt Beverage between the hours of 2:00 a.m. and 6:00 a.m. at any event for which a special event Cereal Malt Beverage permit has been issued.
- (b) No Cereal Malt Beverage shall be given, sold or traded to any person under 21 years of age.
- (c) No more than four (4) special event permits may be issued in a calendar year to the same applicant.
- (d) No special event Cereal Malt Beverage permit issued hereunder may be transferred or assigned to any other vendor.
- (e) All local ordinances and state statutes for the sale and consumption of Cereal Malt Beverage apply to holders of special event Cereal Malt Beverage permits.

Secs. 10-66—10-80. - Reserved.

ARTICLE III. - ALCOHOLIC LIQUOR

DIVISION 1. - RETAIL LIQUOR AND OTHER.

Sec. 10-81. – License required.

- (a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the Kansas liquor control act, as amended, without first having obtained a state license to do so.
- (b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupation tax levied in this division, and the tax shall be received and a receipt shall be issued for the period covered by the state license.

Sec. 10-82. – Occupational taxes.

There is hereby levied an occupation tax, as prescribed in Appendix F, on any person holding a license issued by the state director of alcoholic beverage control for the following:

- (1) the retail sale within the city of alcoholic liquors for consumption off the premises;
- (2) all alcoholic liquor and/or cereal malt beverage distributors, for the first and each additional distributing place of business operated in the city by the same licensee;
- (3) all microbreweries;
- (4) all farm wineries;
- (5) all persons engaged in a nonbeverage users' business

Such tax shall be paid by the licensee to the city clerk before business is begun under an original state license and shall be paid within five (5) days after any renewal of a state license. A holder of any of the above-described licensees shall present such state license when applying to pay the occupation taxes levied herein, and the taxes shall be received and receipt issued for the period covered by the state license by the city license collector. The occupation tax is non-refundable and non-transferable.

Sec. 10-83. - Application; issuance.

All applications for new or renewal city licenses under this division shall be submitted to the city clerk. Upon presentation of a state license, payment of the city occupation tax and the license application, the city clerk shall issue a city license for the period covered by the state license if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

Sec. 10-84. - Posting of receipt required.

Every licensee under this division shall cause the city alcoholic liquor retailer's occupation tax receipt to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

Sec. 10-85. – Business regulations.

It shall be unlawful for a retailer of alcoholic liquor to:

- (1) Permit any person to mix drinks in or on the licensed premises unless the person is preparing or mixing samples for the purposes of conducting wine, beer, or distilled spirit tastings, or any combination thereof, as authorized by K.S.A. 41-308d, and amendments thereto;
- (2) Employ any person under the age of 21 years in connection with the operation of such retail establishment;
- (3) Employ any person in connection with the operation of such retail establishment who has been adjudged guilty of a felony;
- (4) Permit any gambling on the premises;
- (5) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring, or consumption of any alcoholic liquor or enhanced cereal malt beverages to or for any person under 21 years of age.

Sec. 10-86. - Restrictions upon location.

- (a) No license shall be granted to sell at retail alcoholic liquor on premises which are located in areas not zoned for such purpose, or if the premises does not comply with other city laws, including building and health codes.
- (b) No license shall be granted to sell at retail alcoholic liquor at any place of business or location within 300 feet of any public or parochial school, college, church, nursing home, library or hospital; provided, that if any such facility shall be established within 300 feet after such premises have been licensed, then such premises shall be an eligible location for licensing. The distance shall be measured from the nearest property line of the school, college, church, nursing home, library or hospital to the nearest portion of the building occupied by the business selling or serving the beverages.
- (c) The prohibition set out in subsection (b) of this section shall not apply to properties that are located in the Central Business District or areas zoned General Business District, or to establishments located within the 300-foot limit as of the latest effective date of this section, so long as the license is and has been continuously held without allowing cancellation or lapse for a period of thirty (30) days or more.
- (d) The prohibition set out in subsection (b) of this section shall further not apply to any business that obtains an enhanced cereal malt beverage, club, drinking establishment, caterer, temporary permit, farm winery, or microbrewery license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation from the governing body. The governing body shall grant such waiver only following notice to property owners within such 300-foot distance (in such manner as the city may require)

and a public hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.

Sec. 10-87. – Days and hours of operation.

- (a) No person shall sell at retail alcoholic liquor in the original package:
 - (1) On Sunday before 12 noon or after 8 p.m.;
 - (2) On Easter Sunday, Thanksgiving Day or Christmas Day; or
 - (3) Before 9 a.m. or after 11 p.m. on any day when the sale is permitted.
- (b) Enhanced cereal malt beverages may be sold on premises licensed for the retail sale of enhanced cereal malt beverages for consumption off the premises at any time when alcoholic liquor is allowed by law to be served on the premises.

Secs. 10-88—10-92. – Reserved.

DIVISION 2. - TEMPORARY PERMITS

Sec. 10-93. – Permit required.

It shall be unlawful for any person granted a temporary permit by the state to sell or serve any alcoholic liquor within the city without first obtaining a temporary permit from the state, and a local temporary permit from the city clerk.

Sec. 10-94. – Application; City-owned properties.

- (a) It shall be unlawful for any person to conduct an event under a state-issued temporary permit without first applying for a local temporary permit at least fourteen (14) days before the event. Written application for the local temporary permit shall be made to the city clerk and shall clearly state:
 - (1) The name of the applicant;
 - (2) The group for which the event is planned;
 - (3) The location of the event;
 - (4) The date and time of the event;
 - (5) Any anticipated need for police, fire or other municipal services.
- (b) Notwithstanding the provisions of Section 10-2 above, a temporary permit may be issued by the city clerk for City-owned properties and facilities if the event has been approved by the governing body in accordance with K.S.A. 41-719.

Sec. 10-95. - Fee; display of receipt.

- (a) There is hereby levied a temporary permit fee in the amount as set out in appendix F on each group or individual holding a temporary permit issued by the state director of alcoholic beverage control authorizing sales within the city, which fee shall be paid before the event is begun under the state permit. License fees are non-refundable and non-transferable.
- (b) Every temporary permit holder shall cause the temporary permit receipt to be placed in plain view on any premises within the city where the holder of the temporary permit is serving or mixing alcoholic liquor for consumption on the premises.

Sec. 10-96. - Issuance.

Upon presentation of a state temporary permit application, payment of the city's temporary permit fee and a written application as provided for in section 10-94, the city clerk shall issue a local temporary permit to the applicant if there are no conflicts with any zoning or other ordinances of the city. The city clerk shall notify the chief of police whenever a temporary permit has been issued and forward a copy of the permit and application to the chief of police.

Sec. 10-97. - Restrictions.

- (a) No temporary permit holder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. at any event for which a temporary permit has been issued.
- (b) No alcoholic liquor shall be given, sold or traded to any person under 21 years of age.

Secs. 10-98—10-125. – Reserved.

DIVISION 3. - PRIVATE CLUBS

Sec. 10-126. – License required.

It shall be unlawful for any person granted a private club license by the state to sell or serve any alcoholic liquor or enhanced cereal malt beverages authorized by such license within the city without first obtaining a local license from the city clerk.

Sec. 10-127. – License fee.

There is hereby levied an annual license fee on each private club located in the city which has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. The city license fee for a class A club and class B club shall be as set out in appendix F.

Sec. 10-128. - Application; issuance.

All applications for new or renewal city licenses under this division shall be submitted to the city clerk. Upon presentation of a state license, payment of the city occupation tax and the license application, the city clerk shall issue a city license for the period covered by the state license if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

Sec. 10-129. - Term; refunds; display.

- (a) The license period for a license under this article shall extend for the period covered by the state license. License fees are non-refundable and non-transferable.
- (b) Every licensee shall cause the city club license issued under this article to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

Sec. 10-130. - Business regulations.

- (a) No club licensee under this article shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 6:00 a.m. on any day.
- (b) Enhanced cereal malt beverages may be sold on premises licensed for the retail sale of enhanced cereal malt beverages for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.

- (c) No club membership shall be sold to any person under 21 years of age, nor shall alcoholic beverages or enhanced cereal malt beverages be given, sold or traded to any person under 21 years of age.

Secs. 10-131—10-165. – Reserved.

DIVISION 4. - CATERERS

Sec. 10-166. - Required.

It shall be unlawful for any person licensed by the state as a caterer to sell alcoholic liquor or enhanced cereal malt beverages by the drink in the city without obtaining a local caterer's license from the city clerk.

Sec. 10-167. - Fee.

There is hereby levied an annual license fee as set out in appendix F on each caterer doing business in the city who has a caterer's license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five (5) days after any renewal of a state license.

Sec. 10-168. - Application; issuance.

All applications for new or renewal city licenses under this article shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

Sec. 10-169. - Term; refunds; display.

- (a) The license period shall extend for the period covered by the state license. License fees are non-refundable and non-transferable.
- (b) Every licensee shall cause the caterer's license to be placed in plain view on any premises within the city where the caterer is serving or mixing alcoholic liquor or enhanced cereal malt beverages for consumption on the premises.

Sec. 10-170. - Business regulations.

- (a) No caterer licensed under this article shall allow the serving, mixing or consumption of alcoholic liquor or enhanced cereal malt beverages between the hours of 2:00 a.m. and 6:00 a.m. on any day.
- (b) No alcoholic beverages or enhanced cereal malt beverages shall be given, sold or traded to any person under 21 years of age.

Sec. 10-171. - Notice to chief of police.

Prior to any event at which a caterer will sell or serve alcoholic liquor or enhanced cereal malt beverages by the individual drink, the caterer shall provide written notice to the chief of police at least seven (7) days prior to the event if the event will take place within the city. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving.

Secs. 10-172—10-205. - Reserved.

DIVISION 5. - DRINKING ESTABLISHMENTS

Sec. 10-206. – License required.

It shall be unlawful for any person granted a drinking establishment license by the state to sell or serve any alcoholic liquor or enhanced cereal malt beverages authorized by such license within the city without first obtaining a city license from the city clerk.

Sec. 10-207. - Fee.

There is hereby levied an annual license fee as set out in appendix F on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five (5) days after any renewal of a state license.

Sec. 10-208. - Application; issuance.

All applications for new or renewal city licenses under this article shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

Sec. 10-209. - Term; refunds; display.

- (a) The license period for a license issued under this article shall extend for the period covered by the state license. License fees are non-refundable and non-transferable.
- (b) Every licensee shall cause the city drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

Sec. 10-210. - Business regulations.

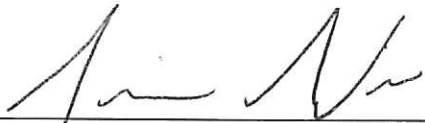
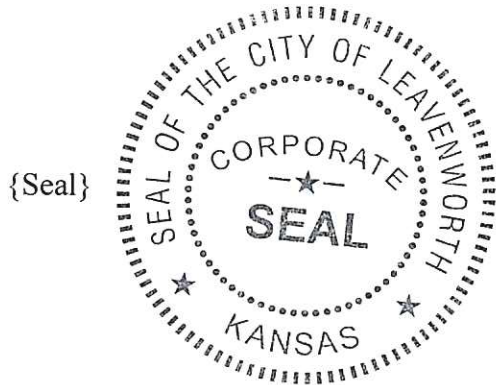
- (a) No drinking establishment licensed under this article shall allow the serving, mixing or consumption of alcoholic liquor or enhanced cereal malt beverages on its premises between the hours of 2:00 a.m. and 6:00 a.m. on any day.
- (b) Enhanced cereal malt beverages may be sold on premises licensed for the retail sale of enhanced cereal malt beverage for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.
- (c) No alcoholic beverages or enhanced cereal malt beverages shall be given, sold or traded to any person under 21 years of age.

Secs. 10-211—10-220. - Reserved.

Section 2. REPEAL. Chapter 10, Alcoholic Beverages and Cereal Malt Beverages, of the Code of Ordinances of the City of Leavenworth, Kansas, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

Section 3: EFFECTIVE DATE. This Ordinance shall take effect and be in force on April 1, 2019 and shall be publication in the official city newspaper.

PASSED and APPROVED by the Governing Body on this 26th day of March 2019.



Jermaine Wilson, Mayor

ATTEST:



Carla K. Williamson, CMC, City Clerk