

ORDINANCE NO. 1021

AN ORDINANCE REGULATING THE SALE OF ENHANCED CEREAL MALT BEVERAGES AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF WESTWOOD, KANSAS.

WHEREAS, the Kansas Legislature during the 2018 legislative session adopted HB 2502 providing for amendments to the Kansas Liquor Control Act and the Kansas Cereal Malt Beverage Act, the effective date for which was set for April 1, 2019 following the adoption of rules and regulations by the Director of Alcoholic Beverage Control (“ABC”);

WHEREAS, the City of Westwood deems it appropriate in light of the adoption of HB 2502 and the adoption of rules and regulations by the ABC that the City’s Code provisions relating to the regulation of Cereal Malt Beverages be amended as provided for within this Ordinance;

WHEREAS, the City of Westwood deems it appropriate to allow for administrative approval of renewal of licenses to sell enhanced cereal malt beverage,

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

SECTION ONE. Westwood Municipal Code Title 3, Article 2, shall be amended in part to provide as follows:

ARTICLE 1. GENERAL PROVISIONS

3-101. DEFINITIONS. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section.

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

(b) 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.

(c) 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.

(d) Class A Club - means a premises which is 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 (hereinafter referred to as members), and their families and guests accompanying them.

(e) Class B Club - means a 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.

(f) Club - means a Class A or Class B club.

(g) Drinking Establishment - means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(h) "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.

(i) General Retailer - means a person who has a license to sell cereal malt beverages at retail for consumption on the licensed premises. One who operates a cereal malt beverage establishment. 3-2

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

(k) Place of Business. - Any place at which cereal malt beverages or alcoholic beverages or both are sold.

(l) Retailer - means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

(m) 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.

(n) Wholesaler or distributor. - 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 cereal malt beverages at retail.
(Code 2008)

Westwood Municipal Code Title 3, Article 2, shall be amended in its entirety to provide as follows:

ARTICLE 2. CEREAL MALT BEVERAGES

3-201. LICENSE REQUIRED OF GENERAL AND LIMITED RETAILERS. (a) It shall be unlawful for any person to sell any cereal malt beverage at retail without

a license for each place of business where cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any cereal malt beverage in any other manner. (K.S.A. 41-2702; Code 1970, 3-201; Code 1993, 3-102; Code 2008)

3-202. APPLICATION. An application for renewal of a CMB license shall be submitted to the city clerk no less than 45 days preceding the expiration of the applicant's current 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 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 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 8 of this code.

(g) 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 7 of this code.

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 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. (Code 2008)

- 3-202A. LICENSE APPLICATION PROCEDURES. (a) All applications for a new 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 clerk's office shall endeavor to provide copies of all applications for new CMB licenses to the police department, to the fire department, and to the 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 3-202 (f) and (g) herein. The departments will then make every effort to recommend approval, or disapproval, of applications within five (5) working days of the department's receipt of the application
- (c) For renewal of a CMB license, the city clerk's office shall notify the applicant of an existing license thirty (30) days in advance of its expiration.
- (c) Renewal licenses may be issued by the city clerk upon payment of the necessary fee if the licensee's license has not been suspended or revoked pursuant to Section 3-209 during the license term and the licensee continues to meet the qualifications for issuance of the license.
- (d) The governing body may decline to consider any application for a new license that has not been submitted 10 days in advance and been reviewed by the above 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. (Code 2008)
- 3-203. 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. (Code 1983, 3-105)
- 3-204. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued. (Code 1983, 3-106)
- 3-205. LICENSE, DISQUALIFICATION. No general or limited retail 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 Johnson 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 nonresidence 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 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 (i) shall not apply in determining eligibility for a renewal license. (Code 2008)

3-206. RESTRICTION UPON LOCATION. (a) No general or limited retail 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 the city limits that is within a 200-foot radius of any church, school or library.

(c) Provisions of this section 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 a 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. (K.S.A. 41-2704; Code 1993, 3-115; Code 2008)

- 3-207. LICENSE FEE. The rules and regulations regarding license fees shall be established administratively, the license fee to be prorated. The licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued. (Code 2008)
- 3-208. 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 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. (Code 2008)
- 3-209. LICENSE SUSPENSION/REVOCATION BY GOVERNING BODY. The governing body of the city shall give thirty (30) days written notice to a person holding a license to sell enhanced cereal malt beverages of its intent to suspend said license and providing the license holder the opportunity to request a hearing before the Governing Body. Such license may be suspended for a period not more than thirty (30) days, or permanently revoked 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 article or has become ineligible to obtain a license under this article;
 - (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 under this article;
 - (f) For permitting any person to mix drinks with materials purchased in any premises licensed under this article 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 premises licensed under this article;
 - (j) The nonpayment of any license fees;

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

(l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club. (K.S.A. 41-2708; Code 2008)

- 3-210. SAME; APPEAL. The licensee, within twenty (20) days after the order of the governing body revoking any license, may appeal to the district court of Johnson 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 or suspension during the pendency of such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter. (K.S.A. 41-2708; Code 2008)
- 3-211. 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. 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. (Code 2008)
- 3-212. 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 under this article 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. (K.S.A. 41-307:307a; Code 2008)
- 3-213. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations.
- (a) 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.
 - (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) and subsection (l), no enhanced 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.; closing hours for clubs shall conform to K.S.A. 41-2614 and any amendments thereto.

(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. 41- 2701 et seq., 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 the legal age for consumption of enhanced cereal malt beverage in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

(l) The sale at retail of cereal malt beverages in the original package is allowed within the City on any Sunday, except Easter, between the hours of 9:00 a.m. and 8:00 p.m.

3-214. **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 on the premises thereof 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'/females' pubic hair, anus, buttocks or genitals;

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

(d) Performing or permitting any person to perform 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 persons' breasts, buttocks, anus or genitals.

(e) Using or permitting any person to use any artificial devices or inanimate objects to depict any of the acts prohibited by paragraph (d) of this section.

(f) Showing or permitting any person to show 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) As used in this section, the term premises means the premises licensed by the city as a 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. (Code 2008)

3-215. **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. (Code 2008)

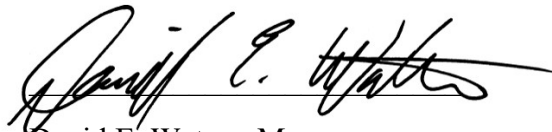
3-216. **MINORS ON PREMISES.** (a) It shall be unlawful for any person under 21 years of age to remain on any premises where the sale of enhanced cereal malt beverages is licensed for on-premises consumption. (b) This section shall not apply if the person under 21 years of age is an employee of the licensed establishment, or is accompanied by his or her parent or guardian, or if the licensed establishment derives not more than thirty (30) percent of its gross receipts in each calendar year from the sale of enhanced cereal malt beverages for on premises consumption. (Code 2008)

SECTION TWO. All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

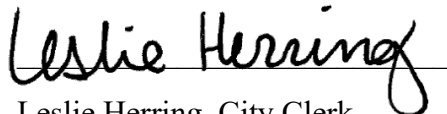
SECTION THREE: This Ordinance shall take effect upon its adoption by the City Council and its execution by the Mayor.

PASSED by the Governing body this 12th day of August, 2021.

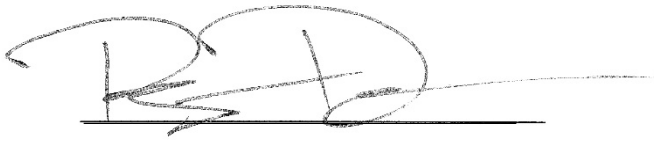



David E. Waters, Mayor

Attest:


Leslie Herring, City Clerk

Approved as to form and legality:


Ryan Denk, City Attorney