

ORDINANCE NO. 736

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF OGDEN, KANSAS

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

Section 1. **Amendment – New Sections.** That Article 2 of Chapter 3 of the Code of the City of Ogden, Kansas, is hereby amended by adding the following new sections:

3-217. DEFINITION. 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.

3-218. LICENSE ISSUED BY CITY. The “Cereal Malt Beverage License” issued by the city of Ogden, KS, pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in section 3-217, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

Section 2. **Amendment.** That Section 3-201 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

3-201. LICENSE REQUIRED OF RETAILER.

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

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

Section 3. **Amendment.** That Section 3-202 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

3-202. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:

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

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

- (c) The name of the owner of the premises upon which the place of business is located;
- (d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.
- (e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making 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.
- (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.

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 Riley County Police Department for investigation of the applicant. It shall be the duty of the Riley County Police Department to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

Section 4. Amendment. That Section 3-202A of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

3-202A. LICENSE APPLICATION PROCEDURES.

- (a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.
- (b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.
- (c) The clerk's office shall provide copies of all applications to the police department, to the fire department, and to the city-county health department, when they are received. The police department will run a record check on all applicants and the fire department and health department will inspect the premises in accord with chapters 7 and 8 of this code. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.
- (d) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above city departments.
- (e) An applicant who has not had an enhanced cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

Section 5. **Amendment.** That Section 3-206 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

3-206. 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) Provisions shall not apply to any establishment holding a private club license issued by the State of Kansas.

(c) 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.

Section 6. **Amendment.** That Section 3-207 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

3-207. 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, \$175 per calendar year.

(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, per calendar year, \$50 per calendar year.

The 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. **Amendment.** That Section 3-208 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

3-208. SUSPENSION OF LICENSE. The Mayor, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this ordinance or other laws pertaining to enhanced cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order.

Section 8. **Amendment.** That Section 3-209 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

3-209. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY. The governing body of the city, upon five days' written notice, to a person holding a license to sell enhanced cereal malt beverages shall permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

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

application therefor;

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

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

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

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

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

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

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

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

(j) The nonpayment of any license fees;

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

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

Section 9. Amendment. That Section 3-212 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

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 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 10. Amendment. That Section 3-213 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

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 shall at all times have a front and rear exit unlocked when open for business.

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

(c) Except as provided by subsection (d), no enhanced cereal malt beverages may be sold or dispensed 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 beverage 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.

(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. 41-2601, et seq. and amendments thereto, and licensed as a club by the State Director of Alcoholic Beverage Control.

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

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

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

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

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

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

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

Section 11. Amendment. That Section 3-214 of the Code of the City of Ogden, Kansas, is hereby amended to read as follows:

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 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 to perform on the licensed premises acts of or acts which simulate:

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

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

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

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

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

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

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

(g) The term premises means the premises licensed by the city as an enhanced cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

Section 12. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED AND APPROVED this 3rd day of April, 2019.



Robert R Pence
Robert Pence, Mayor

ATTEST:

David Ward
David Ward, City Clerk