

RESOLUTION NO. 05-2019

A RESOLUTION REGULATING THE SALE OF CEREAL MALT BEVERAGE, ENHANCED CEREAL MALT BEVERAGE AND BEER, CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE UNINCORPORATED AREAS OF CHEROKEE COUNTY, KANSAS, REVISING RESOLUTIONS NO. 1-92 AND 5-2012, IN COMPLIANCE WITH THE CEREAL MALT BEVERAGE ACT OF THE STATE OF KANSAS, AS AMENDED AND REVISED.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CHEROKEE COUNTY, KANSAS, THAT THE FOLLOWING RESOLUTION BE ADOPTED:

SECTION 1. GENERAL AUTHORITY. K.S.A. 19-101 *et. seq.*, and K.S.A. 19-212 authorize the Board of County Commissioners to transact all County business and perform all powers of local legislation deemed appropriate, and to make all contracts and do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers.

SECTION 2. PROJECT. Revising Cherokee County cereal malt beverage regulations in compliance with the Cereal Malt Beverage Act of the State of Kansas, as amended and revised.

SECTION 3. 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) Cereal Malt Beverage means enhanced cereal malt beverage as that term is defined by K.S.A. 41-2701, as revised and amended according to the 2017 Kansas Session Laws, Chapter 56, 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.

(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) Drinking Establishment means premises which may be open to the general public

where alcoholic liquor by the individual drink is sold.

(g) General Retailer means a person who has a license to sell cereal malt beverages at retail.

(h) 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.

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

(j) 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.

(k) Wholesaler or distributor Any individuals, firms, co-partnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, co-partnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.

(l) Licensee shall mean any person to whom a current Class A club, Class B club, or drinking establishment license has been issued by the Kansas State Department of Revenue authorizing the sale of alcoholic liquor.

(m) Member shall mean any person who has a membership to a Class "A" or "B" club.

SECTION 4. 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 5. APPLICATION. Any person desiring a license shall make an application to the governing body of Cherokee County 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 County health officer 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 County with any information pertinent to the application. One copy of such application shall immediately be transmitted to the Cherokee County Sheriff for investigation of the applicant. It shall be the duty of the Sheriff to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The Sheriff shall report to the County 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.

SECTION 6. LICENSE APPLICATION PROCEDURES.

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

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

(c) The County Clerk's office shall provide copies of all applications to the Sheriff's Department and to the County Health Department, when they are received. The Sheriff's Department will run a record check on all applicants and the Health Department will inspect the premises. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.

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

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

SECTION 7. LICENSE GRANTED; DENIED.

(a) The journal of the governing body shall show the action taken on the application.

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

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

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

SECTION 8. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

SECTION 9. LICENSE, DISQUALIFICATION. No license shall be issued to:

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

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

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

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

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

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

SECTION 10. RESTRICTION UPON LOCATION. 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.

SECTION 11. 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 for consumption on the premises: \$50.00 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, \$50.00 per calendar year.

(c) CMB State Stamp -- \$25.00

Cherokee County waives the second \$50.00 County fee for applicants seeking both licenses, General Retailer and Limited Retailer, if applying for both licenses at the same time.

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 12. SUSPENSION OF LICENSE. The Sheriff's Department, 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 13. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY. The governing body of the County, 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) The licensee has violated any provisions of the Kansas Cereal Malt Beverage Act, K.S.A. 41-2701, et. seq., as amended and revised thereto, or any rules or regulations of the County.

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

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

(d) 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;

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

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

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

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

- (g) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;
- (h) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed;
- (i) The nonpayment of any license fees;
- (j) If the licensee has become ineligible to obtain a license;
- (k) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

SECTION 14. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the District Court of Cherokee County and the District Court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken shall not suspend the order of revocation of the license of any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

SECTION 15. CHANGE OF LOCATION. If a new license needs to be issued due to a change of name or location of the business, a new application must be submitted along with all applicable fees. The licensee 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, subject to the same State and County fees stated in Section 11 above. 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.

SECTION 16. 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 County 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 17. 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 sheriff and health officers of the County and State.
- (c) Enhanced cereal malt beverages may be sold at retail in the original package on any Sunday, except Easter Sunday, between the hours of 12:00 noon and 8:00 p.m.
- (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 18. 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 County 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 19. 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.

SECTION 20. 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 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 30 percent of its gross receipts in each calendar year from the sale of cereal malt beverages for on-premises consumption.

SECTION 21. Violation of this resolution is a Class C misdemeanor. Prosecution of violations shall be conducted in the manner provided by law for the prosecution of misdemeanor violations of state laws. The penalty imposed shall be in accordance with the penalties established by law for conviction of a Class C misdemeanor.

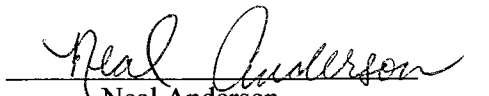
SECTION 22. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

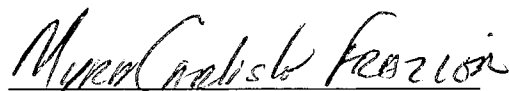
SECTION 23. This Ordinance shall take effect and be in force from and after April 1, 2019, and shall be published in the official County newspaper.

PASSED and APPROVED by the Governing Body this 11th day of March, 2019.


APPROVED:


Cory Moates, Chair
Cherokee County Commissioner


Neal Anderson
Cherokee County Commissioner


Myra Carlisle Frazier
Cherokee County Commissioner

ATTEST:


Rodney Edmondson
Cherokee County Clerk

Executed: March 11, 2019
by the Board of County Commissioners

