

ORDINANCE 1088

AN ORDINANCE AMENDING CHAPTER III, BEVERAGES, ARTICLES 1, 2, 3, 4, AND 5 OF THE CODE OF THE CITY OF EUDORA, KANSAS, RELATING TO BEVERAGES GENERALLY.

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

SECTION I. That Chapter III, Article 1 of the Code of the City of Eudora, Kansas, is hereby amended to read 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) **Beer** means a beverage, containing more than 3.2 percent alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager, beer, porter and similar beverages having such alcoholic content.

(d) **Cereal Malt Beverage** means any fermented but undistilled liquor brewed or made 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.

(e) **Class A Club** means a premise 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.

(f) **Class B Club** means a premise 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.

(g) **Club** means a Class A or Class B club.

(h) **Director** means the director of alcoholic beverage control of the department of revenue.

(i) **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 act, or cereal malt beverage or enhanced cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2702 and amendments thereto.

(j) **Domestic Beer** means beer which contains not more than 8 percent alcohol by weight and which is manufactured from agricultural products grown in this state.

(k) **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.

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

(m) **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 III.

(n) **Farm Winery** means a winery licensed by the director to manufacture, store and sell domestic table wine.

(o) **Food Establishment** has the meaning provided by K.S.A. 65-656 and amendments thereto.

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

(q) **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.

(r) **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.

(s) **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.

(t) **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 liquor, beer, enhanced cereal malt beverage, or cereal malt beverage.

(u) **Manufacturer** does not include a microbrewery or a farm winery.

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

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

(x) **Minor** means any person under 21 years of age.

(y) **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.

(z) **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.

(aa) **Person** means any natural person, corporation, limited liability company, partnership or association.

(bb) **Place of Business** means any place at which cereal malt beverages or alcoholic beverages or both are sold.

(cc) **Restaurant** means:

(1) In the case of a club, restaurant means a licensed food establishment which, as determined by the director, derives from sales of food for consumption on the licensed club premises not less than fifty percent (50%) of its gross receipts from all sales of food and beverages on such premises in a 12-month period;

(2) In the case of a drinking establishment subject to a food sales requirement under K.S.A. 41-2642 and amendments thereto, restaurant means a licensed food establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than thirty percent (30%) of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and

(3) In the case of drinking establishment subject to no food sales requirement under K.S.A. 41-2642 and amendments thereto, restaurant means a licensed food establishment.

(dd) **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.

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

(ff) **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.

(ff) (gg) **Sell at Retail** and **Sale at Retail** refer to and mean 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.

(hh) **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 temporary permit.

(ii) **Spirits** means any beverage which contains alcoholic obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(jj) **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.

(kk) **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.

(ll) **To Sell** includes to solicit or receive an order for, to keep or expose for sale and to keep with the intent to sell.

(mm) **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 cereal malt beverages at retail.

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

(Code 1987)

3-102. Public consumption.

(a) Except as otherwise provided herein, it shall be unlawful for any person to sell, serve, dispense, drink or consume any cereal malt beverage or alcoholic liquor in any public place not licensed to sell such beverages within or under the jurisdiction of the city or upon any street, public thoroughfare or property owned by the state or any governmental subdivision thereof unless such property is leased to others under K.S.A. 12-1740 et seq., if the property is being used for hotel or motel purposes or purposes incidental thereto or is owned or operated by an airport authority created pursuant to Chapter 27 of the Kansas Statutes Annotated.

(b) Notwithstanding the foregoing, and pursuant to K.S.A. 41-719(c) and K.S.A. 41-719(d), as amended, the drinking and consumption of beer, cereal malt beverages, and enhanced cereal malt beverages shall be permitted on or in the following areas: the open outside areas and viewing stands of that property owned by the city commonly known as Lucy Kaegi Park, 1638 Elm Street, except for the dugouts, ball fields, or concession stands located thereon; and such other locations and times as the governing body of the city may designate from time to time; provided, that such exemptions shall be subject to the following additional rules and regulations:

- (1) All operations, use, or consumption under this ordinance shall be in full compliance with federal, state, and local laws and regulations, including the Kansas liquor control act, as amended. By way of example only, under no circumstances shall any individual under the age of 21 or without proper identification be allowed to consume alcoholic beverages at any time on city property.
- (2) Nothing in this ordinance shall be construed as permitting the consumption of other alcoholic liquor, except for such beer, cereal malt beverages, or enhanced cereal malt beverages.
- (3) The exemption provided for in this ordinance shall only apply during those regular hours that Lucy Kaegi Park is open to the public, as determined by the city from time to time, and only during regularly-scheduled adult sports events sponsored or organized by the city's Department of Recreation. No alcoholic liquor shall be permitted on public property during any youth or school district sports events, or any other events.
- (4) Nothing herein shall be deemed to permit the sale, serving, or dispensing of beer, cereal malt beverages, enhanced cereal malt beverages, or other alcoholic liquors, as already prohibited by this section.

(Code 1985; Ord. 992)

3-103. Open container.

(a) No person shall transport in any vehicle upon a highway or street any cereal malt beverage or alcoholic beverage unless such beverage is:

- (1) In the original, unopened package or container, the seal of which has not been broken and from which the original cap or cork or other means of closure has not been removed;

- (2) 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;
- (3) In the exclusive possession of a passenger in a vehicle which is a recreational vehicle as defined by K.S.A. 75-121 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.

(b) As used in this section "highway" and "street" have meanings provided by K.S.A. 8-1424 and K.S.A. 8-1473 and amendments thereto.

(Code 1985)

3-104. Consumption while driving.

No person shall consume any cereal malt beverage or alcoholic beverage while operating any vehicle upon any street or highway.

(K.S.A. 41-2720; Code 1985)

3-105. Identification card.

(a) It shall be unlawful for any person to:

- (1) Display, cause or permit to be displayed, or have in possession, any canceled, fictitious, fraudulently altered, or fraudulently obtained identification card.
- (2) Lend any identification card to any other person or knowingly permit the use thereof by another.
- (3) Display or represent any identification card not issued to such person as being his or her card.
- (4) Permit any unlawful use of an identification card issued to such person.
- (5) Do any act forbidden or fail to perform any act required by this act.
- (6) Photograph, photostat duplicate or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card or display or have in possession any such photograph, photostat, duplicate, reproduction or facsimile.

(b) It shall be unlawful for any person to:

- (1) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the purchase of any alcoholic liquor.
- (2) Lend any identification card to or knowingly permit the use of any identification card by any person under the minimum age established by state law for use in the purchase of any cereal malt beverage.

(Code 1985)

SECTION II. That Chapter III, Article 2 of the Code of the City of Eudora, Kansas, is hereby amended to read as follows:

ARTICLE 2. CEREAL MALT BEVERAGES AND ENHANCED CEREAL MALT BEVERAGES

3-201. License Issued by City.

The "Cereal Malt Beverage License" issued by the city of Eudora pursuant to this article, authorizes the sale of cereal malt beverages and enhanced cereal malt beverages, as defined in section 1, by those retailers in compliance with this article and other laws and regulations that may apply.

3-202. 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.

(K.S.A. 41-2702: Code 1977, 3-102: Code 1985)

3-203. 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 of the United States;

(f) Each application or a general retailer's license shall be accompanied by a certificate from the city codes administrator 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 city clerk shall investigate each applicant to determine whether qualified as licensed. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

(h) A copy of the State of Kansas Certificate of Good Standing;

(i) Receipt of a Certificate of Registration on the City's Retailers Registry;
and

(j) 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 article. The chief shall report to the city commission not later than five (5) working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the city commission at the earliest meeting consistent with current notification requirements.

(Code 1985; Code 2016)

3-204. 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 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.

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

(e) 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.

(Code 1985; Code 2016)

3-205. License granted; denied.

- (a) The journal of the governing body shall show the action taken on the application.
- (b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.
- (c) No license shall be transferred to another licensee.
- (d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

(Code 1977. 3-10a; Code 1985)

3-206. 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 1985)

3-207. License; disqualification.

No retailer's license shall be issued to:

- (a) A person who is not a resident of the county in which the place of business covered by the license is located, has not been a resident of such county for at least six (6) months or has not been a resident in good faith of the State of Kansas.
- (b) A person who has not been a resident of this state for at least one (1) year immediately preceding application for a retailer's license.
- (c) A person who is not of good character and reputation in the community in which the person resides.
- (d) A person who is not a citizen of the United States.
- (e) A person who, within two (2) years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.
- (f) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.
- (g) 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.

(h) 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.

(i) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications of a licensee.

(j) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection (j) shall not apply in determining eligibility for a renewal license.

(k) A person who has not submitted his or her fingerprints to the police department immediately after making the license application and within a sufficient length of time before the examination thereof by the governing body to permit the use of fingerprints in the determination of any requirements made by this article of applicants for licenses, if so requested by the chief of police.

(Ord. 661, Sec. 2)

3-208. Restriction upon location.

(a) No license shall be granted to sell 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 enhanced cereal malt beverages at any place of business or location within 200 feet of any public or parochial school or church; provided, that if any such facility shall be established within 200 feet after such premises have been licensed, then such premises shall be an eligible location for licensing. For schools, the distance shall be measured from the nearest property line of the school to the nearest portion of the building occupied by the business selling or serving the beverages. For churches, the distance shall be measured from the church building to the portion of the building occupied by the business selling or serving the beverage.

(c) 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 200-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.

3-209. License fee.

(a) Fees for general and limited retailers of enhanced cereal malt beverages shall be as adopted by the governing body and on record in the office of the city clerk from time to time. 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.

(K.S.A. 41-2702; Code 1977, 3-103; Code 1985; Code 2016)

3-210. Revocation and suspension of licenses.

(a) The governing body of the city, upon five (5) days written notice to a person holding a license to sell enhanced cereal malt beverages, may revoke or suspend the license for anyone of the following reasons:

- (1) The licensee has fraudulently obtained the license by giving false information, in the application therefore;
- (2) The licensee has violated any of the provisions of this article or has become ineligible to obtain a license under this article;
- (3) 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;
- (4) The sale of enhanced cereal malt beverages to any person under the legal age for consumption of enhanced cereal malt beverage;
- (5) The nonpayment of any license fees;
- (6) Permitting any gambling in or upon the licensee's place of business;
- (7) Permitting any person to mix drinks with material purchased in the place of business or brought in for that purpose;
- (8) The employment of any persons under the age established by the State of Kansas for employment involving dispensing enhanced cereal malt beverages;
- (9) The employment of persons who have been adjudged guilty within the preceding two years of a felony or of any violation of the intoxicating liquor laws of this state, another state of the United States;

(10) The sale or possession of or permitting any person to use or consume on the licensed premises, any alcoholic liquor.

(b) The provisions of subsections (a)(7) and (10) shall not apply if the place of business or premises are also currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(K.S.A. 41-2708; Ord. 661, Sec. 2)

3-211. Same; procedure.

(a) Whenever any law enforcement officer or other city official has reason to believe that a licensee has violated the provisions of section 3-210, that officer or official shall cause a written complaint to be filed with the commission.

(1) Such complaint shall sufficiently define the charges against the licensee and grounds upon which his or her license is sought to be suspended or revoked.

(2) On receipt of such complaint, the commission shall set a hearing upon the complaint and shall give written notice of such hearing to the licensee. A copy of the complaint shall accompany the notice. The hearing shall be initially scheduled during a regular meeting of the commission and shall be at least ten (10) days from the date the notice is sent.

(3) At the hearing, evidence shall be presented in support of the complaint by the city prosecutor and the licensee shall have the right to be present and represented by counsel, the right to cross-examine witnesses, and the right to present witnesses and evidence on his or her own behalf. A continuance of such hearing may be granted by the commission for good cause shown.

(4) The commission shall decide whether or not the allegations in the complaint are true by a majority vote of those members present at the meeting, if they find any allegations to be true, such finding shall constitute one violation and the commission shall proceed to determine the disposition of the matter.

(b) The commission, upon finding that an allegation based upon subsection 3-210(a)(1), (2), or (5) is true, may revoke the licensee's license.

(c) The commission, upon finding that an allegation based upon any other subsection of 3-208(a), is true, may make the following dispositions:

(1) Upon a licensee's first violation within a three-year period, suspend his or her license for not less than one day or more than ten (10) days;

(2) Upon a licensee's second violation within a three-year period, suspend his or her license for not less than five (5) days or more than two (2) months;

(3) Upon a licensee's third or subsequent violation within a three-year period, suspend his or her license for not less than thirty (30) days or more than six (6) months or may revoke the licensee's license.

(d) The decision and disposition of the commission shall be reduced to writing and the dates of any suspension shall be stated therein. A copy of such decision shall be forthwith sent to the licensee and any such suspension or revocation may begin immediately.

(Ord. 661, Sec. 4)

3-212. Same; appeals.

Within twenty (20) days after the order of the commission revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to the former licensee, or to any person acting for or on the former licensee's behalf, for a period of six months thereafter.

(K.S.A. 41-2708; Ord, 661, Sec. 2)

3-213. Change of location.

If a licensee desires to change the location of his or her place of business, he or she shall make 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 of \$5. 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 1985)

3-214. 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 alcohol beverage control and agents and employees designated by the director with the approval of the secretary of revenue of the State of Kansas authorizing such sales.

(K.S.A. 79-3837; Code 1985)

3-215. Regulations governing retailers.

It shall be the duty of every licensee to observe the following regulations. Noncompliance shall constitute a code violation.

(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), no enhanced cereal malt beverages may be sold or dispensed: (i) between the hours of 12:00 midnight and 6:00 a.m.; (ii) on Easter Sunday; (iii) in the original package before 12:00 noon or after 8:00 p.m. on 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. 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 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 pursuant to the Kansas Club and Drinking Establishment Act 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 license or agent or employee of the licensee shall sell or permit the sale of enhanced cereal malt beverage to any person under the legal age for consumption of enhanced cereal malt beverage;

(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. This provision shall not apply to the state lottery;

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in the place of business or brought in for such purpose unless the licensee is also currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act;

(k) No licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage 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 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 fifty percent (50%) 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.

(Ord. 661, Ord. 841; Code 2016)

3-216. Same; persons.

It shall be the duty of every person to observe the following regulations. Noncompliance constitutes a code violation.

(a) No person under the age of 21 shall purchase, consume or attempt to purchase consume or possess any enhanced cereal malt beverage in any licensed place of business.

(b) No person shall have any alcoholic liquor in his or her possession while in the place of business, unless the premises are currently licensed under a license issued by the State Director of Alcoholic Beverage Control

(c) No person under the age of 21 shall consume or be served alcoholic liquor and a sign so stating shall be prominently posted in all such places;

(d) No person shall remove or carry out from the licensee's place of business, any open container of enhanced cereal malt beverage and a sign so stating shall be prominently posted in all such places of business.

(Ord. 661, Sec. 2; Code 2016)

3-217. 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/females' 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) of this section;

(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) As used in this section, 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.

(Code 1985)

3-218. 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 1985)

3-219. Minors on premises.

(a) It shall be unlawful for any person under the minimum age established by state law for the consumption of enhanced cereal malt beverage 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 such lawful 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 fifty percent (50%) of its gross receipts in each calendar year from the sale of enhanced cereal malt beverages for on premises consumption.

(Code 1985)

SECTION III. That Chapter III, Article 3 of the Code of the City of Eudora, Kansas, is hereby amended to read as follows:

ARTICLE 3. RETAIL LIQUOR

3-301. Business regulations.

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

(a) 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;

(b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;

(c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;

(d) Permit any gambling in or on the premises; or

(e) Have in his or her possession for sale at retail any bottles, cask, or other containers containing alcoholic liquor, except in the original package; or

(f) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person under 21 years of age.

(Code 2016)

3-302 Hours of Sale.

(a) No person shall sell at retail any alcoholic liquor:

(1) On Easter Sunday;

(2) On all other Sundays, before 12 noon or after 8:00 p.m.;

(3) Before 9:00 a.m. or after 11:00 p.m. on any other day than Sunday.

(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.

3-303. Restriction upon location.

(a) Retail alcoholic liquor may not be sold 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) Retail alcoholic liquor may not be sold at any place of business or location within 200 feet of any public or parochial school or church; provided, that if any such facility shall be established within 200 feet after such premises have been licensed, then such premises shall be an eligible location for licensing. For schools, the distance shall be measured from the nearest property line of the school to the nearest portion of the building occupied by the business selling or serving the beverages. For churches, the distance shall be measured from the church building to the portion of the building occupied by the business selling or serving the beverage.

(c) 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 200-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.

SECTION IV. That Chapter III, Article 4 of the Code of the City of Eudora, Kansas, is hereby amended to read as follows:

ARTICLE 4. DRINKING ESTABLISHMENTS AND CLUBS

3-401. Business regulations.

(a) No drinking establishment or club 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 club membership shall be sold to any person under 21 years of age. No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under 21 years of age.

(d) No club or drinking establishment licensed hereunder shall allow anyone except employees to remain on the premises of said drinking establishment between the hours of 2:00 a.m. and 6:00 a.m. of any day of the week, except, that clubs and drinking establishments may operate between 5:00 a.m. and 6:00 a.m. for the sole purpose of food and nonalcoholic beverage sales.

(K.S.A. Supp. 41-2614; Code 2016)

SECTION V. That all previous versions of the code sections amended by the foregoing are hereby repealed in their entirety, the intent of the City being that the foregoing amended code sections shall replace them in their entirety.

SECTION VI. This ordinance shall be in full force and effect from and after its adoption and publication as provided by law.

PASSED AND APPROVED this 24th day of June, 2019, by a majority of all of the members of the Governing Body of the City of Eudora, Kansas.

APPROVED:

Tim Reazin, Mayor

ATTEST:

Pamela Schmeck, City Clerk