

ORDINANCE NO. 1721

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF NORTON, KANSAS AND AMENDING ARTICLE ONE AND TWO, CHAPTER THREE OF THE CODE OF THE CITY OF NORTON, KANSAS AND REPEALING ANY ORDINANCES IN CONFLICT THEREWITH.

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

Section One: Article One, Chapter Three of the Code of the City of Norton shall be amended to read as following:

- 3-101. DEFINITIONS.** Unless otherwise expressly stated or the context clearly indicates of 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 any fermented but undistilled liquor brewed or made from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2 percent alcohol by weight.
 - 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 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.
 - 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. **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. (Code 1988)

Section Two: Article Two, Chapter Three of the Code of the City of Norton shall be amended to read as following:

3-201. LICENSE ISSUED BY CITY. The “Cereal Malt Beverage License” issued by the city of Norton pursuant to this ordinance, authorizes the sale of cereal malt beverage or enhanced cereal malt beverage as defined in section 1, by those retailers in compliance with this ordinance and other laws and regulations that may apply. It shall be unlawful for any person to sell any cereal malt beverage or enhanced cereal malt beverage at retail without a license for each place of business where cereal malt beverages or enhanced cereal malt beverages are to be sold at retail.

3-202. LICENSE REQUIRED OF RETAILER.

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

(b) It shall be unlawful for any person, having a license to sell cereal malt beverage or enhanced 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 or enhanced cereal malt beverage in any other manner.

3-203. APPLICATION. Any person desiring a license to sell cereal malt beverage or enhanced cereal malt beverage at retail 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 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.

3-204. LICENSE APPLICATION PROCEDURES.

(a) All applications for a new and renewed cereal malt beverage or 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. 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 a cereal malt beverage or enhanced cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

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.

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.

3-207 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 Norton 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 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.

3-208. RESTRICTION UPON LOCATION.

(a) No license shall be issued for the sale at retail of any cereal malt beverage or 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 cereal malt beverage or enhanced cereal malt beverage at any place within the city limits that is within a 100-foot radius of any church, school or library.

3-209. LICENSE FEE. The rules and regulations regarding license fees shall be as follows:

(a) General Retailer -- for each place of business selling cereal malt beverage or enhanced cereal malt beverages at retail, \$100 per calendar year.

(b) Limited Retailer -- for each place of business selling only at retail cereal malt beverage or enhanced cereal malt beverages in original and unopened containers and not for consumption on the premises, \$50.00 per calendar year.

(c) Special Event Permit Fee -- the fee of \$25.00 per day for each licensed day of the special event.

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.

3-210. SUSPENSION OF LICENSE. The chief of police, 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 cereal malt beverage or enhanced cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order.

3-211. 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 cereal malt beverage or 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 cereal malt beverage or enhanced cereal malt beverages;

(d) The sale of cereal malt beverage or 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 cereal malt beverage or 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.

3-212. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Norton 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.

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 an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee of \$10.00. 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.

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 cereal malt beverage or 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.

3-215. 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 cereal malt beverage or 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) Cereal Malt Beverage and 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 cereal malt beverage or 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 cereal malt beverage or enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

3-216. PROHIBITED CONDUCT ON PREMISES. The following conduct by a cereal malt beverage or enhanced cereal malt beverage licensee, manager or employee of any licensed cereal malt beverage or 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 a cereal malt beverage or 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.

3-217. 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.

3-218. 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 50 percent of its gross receipts in each calendar year from the sale of cereal malt beverages for on-premises consumption.

3-219. PRIVATE PROPERTY. Nothing in this article shall be deemed to prevent, regulate or control the consumption of cereal malt beverages or enhanced cereal malt beverage upon private property by those occupying said property as the owner, or as a lessee of an owner and by the guest of the owner or lessee, provided that no charge is made by the owner or lessee for the serving of any cereal malt beverage

3-220. PREMISES, ILLUMINATION. It shall be unlawful for any owner, operator, or licensee to operate any place of business licensed for the sale and consumption of cereal malt beverages or enhanced cereal malt beverage on the premises without sufficient illumination to measure not less than five-foot candles of light in all portions of said place of business measured at a height of 36" above the floor.

3-221. SPECIAL EVENT PERMIT REQUIRED. A temporary license may be issued for the sale at retail of cereal malt beverage or enhanced cereal malt beverage which will allow the permit holder to offer for sale, sell and serve cereal malt beverage or enhanced cereal malt beverage for consumption on unpermitted premises, which may be open to the public. That said temporary license shall require an application and approval pursuant to this code. The permit is subject to the following conditions:

- a. A special event retailers' permit shall specify the premises for which the permit is issued;
- b. A special event retailers' permit shall be issued for the duration of the special event, the dates and hours of which shall be specified in the permit;
- c. No more than four special event retailers' permits may be issued to any one applicant in a calendar year; and
- d. Application for the special use permit shall comply with all other license application procedures of this code.

Section 3: Any Ordinance or Ordinances in conflict herewith shall be hereby repealed.

Section 4: This ordinance shall take effect from April 1st, 2019 and its publication in the official city newspaper.

PASSED AND ADOPTED by the Governing Body of the City of Norton, Kansas, this 20th day of February, 2019.

/s/ James L. Miller, Mayor

Attest:

/s/ Darla R. Ellis, City Clerk

First Reading: 01-16-2019
Second Reading: 02-06-2019
Third Reading: 02-20-2019_____