

ORDINANCE NO. 496

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGES, PROVIDING THE LICENSING OF PERSONS SELLING THE SAME, PRESCRIBING LICENSE FEES, ESTABLISHING ZONES, PRESCRIBING RULES AND REGULATIONS, PROVIDING FOR THE REVOCATION OF LICENSES, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF AND REPEALING ORDINANCES NO. 191, 436A, AND 436B.

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

SECTION 1. Definitions. As used in this act the words and phrases herein defined shall have the following meaning unless the context otherwise requires:

- (a) "Person" shall include individuals, firms, co-partnerships, corporations and associations;
- (b) "Sale at retail" and "retail sale" mean sales for the use or consumption and not for resale in any form;
- (c) "Place of business" shall mean any place at which cereal malt beverages are sold;
- (d) "Wholesaler or distributor" shall mean individuals, firms, co-partnerships, corporations and associations which sell or offer for sale any beverage referred to in this act, to persons, co-partnerships, corporations and associations authorized by this act to sell cereal malt beverages at retail;
- (e) "Cereal malt beverage" shall include any fermented but undistilled liquor brewed or made from malt or from a mixture of malt and or malt substitute but shall not include any such liquor which contains more than three and two-tenths percent (3.2) of alcohol by weight.

(f) "Legal age" for consumption of cereal malt beverage means twenty-one years of age or older.

SECTION 2. License Required of Retailers. No person shall sell any cereal malt beverage at retail without first having secured a license for each place of business which such person desires to operate within the corporate limits of the City of Haven, Kansas as herein provided. And a person having a license to sell only at retail cereal malt beverages in original and unbroken case lots, and not for consumption on the premises, shall not sell such beverages in any other manner.

SECTION 3. License Fee. There are hereby prescribed license fees as follows:

(a) General retailer for each place of business selling cereal malt beverages at retail, in original and unbroken case lots, and not for consumption on the premises, \$50.00 annually if such license is issued on an annual basis, or per calendar year if such license is issued on a calendar year basis as herein provided.

(b) General retailer for each place of business selling cereal malt beverages at retail, for consumption on the premises, \$200.00 annually if such license is issued on an annual basis, or per calendar year if such license is issued on a calendar year basis as herein provided.

SECTION 4. Application for License. Any person desiring a license shall make an 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 prepared form by the Attorney General of the State of Kansas, and shall contain:

- (a) The name and residence of the applicant and how long he 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) A statement that the applicant is a citizen of the United States and not less than twenty-one years of age and that he has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, nor 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.

SECTION 5. Examination: Disqualification: Approval. After examination of the application, the governing body of the city shall, if the application is qualified as provided by law, issue a license to said applicant. No license shall be issued to:

- (a) A person who is not a resident of the county in which the premises covered by the license are located, and who has not been a resident in good faith of the State of Kansas for at least one year prior to said application and a resident of the county in which said place of business is to be operated for at least six months;
- (b) A person who is not of good character and reputation in the community in which he resides;
- (c) A person who is not a citizen of the United States;

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(d) A person who within two years immediately preceding the date of making application has been convicted of a felony or any crime involving a 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;

(e) A co-partnership, unless one of the co-partners is a resident of the county in which the premises covered by the license is located and unless all the members of such co-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 twenty-five percent of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than nonresidence within the city or county;

(g) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee. Said license shall be issued, either on an annual basis or for the calendar year. If such license is issued on an annual basis the governing body of the City shall notify the cereal malt beverage wholesalers supplying the City on or before April 1, of the year, if said license is not renewed.

(h) No License shall be issued for the sale of cereal malt beverages to any establishment which is connected to, or contained in a private residence or dwelling which allows entrance to the establishment from private living quarters.

SECTION 6. License. The journal of the Governing Body shall show the action taken, and if the license is granted, the action of the Governing Body shall direct the officers charged by law to issue other licenses under the general licensing power of the city to execute the license by order of the Governing Body. The license shall not be transferable. The license shall state that it is not transferable, the date issued and that regardless of the date issued the license shall only be authorized to operate under the license for the remainder of the calendar year for which the license is issued. The license shall be kept posted in a conspicuous place of business.

SECTION 7. Statutory Requirements. No cereal malt beverage may be sold between the hours of twelve o'clock midnight and six a.m. and such place of business be cleared at 12 o'clock midnight, and no malt beverages shall be consumed on said premises or place of business after the hour of 12:00 o'clock midnight nor before 6:00 a.m. on any day or on Sunday or any election day. No private rooms or closed booths shall be operated in any place of business. The place of business shall be open to the public and to the Police at all times during business hours. No person under legal age for consumption of cereal malt beverage shall be permitted to buy or drink any of such beverages in or about said place of business.

SECTION 8. Prohibited Zone(s) Established. No place of business may be located within the following described zone(s):

(a) Within 300 feet of any church, school, or municipal public park.

SECTION 9. Revocation of Licenses. The Governing Body of the City, upon five (5) days' notice to the persons holding such license, shall revoke or suspend such license for any one 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 act or any rule or regulations made by the City as the case may be:

(c) If the licensee has become ineligible to obtain a license in this act:

(d) Drunkenness of the person holding such license or permitting any intoxicated person to remain in such place:

(e) The sale of cereal malt beverage to those under legal age of consumption of cereal malt beverage.

(f) The nonpayment of any license fees:

(g) For permitting any gambling in or upon such premises:

(h) For permitting any person to mix drinks with materials purchased in said place of business or brought in for this purpose:

(i) For the employment of persons under the legal age for consumption of cereal malt beverage in dispensing cereal malt beverages.

(j) For the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law:

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(k) For the sale or possession of or for permitting any person to use or consume upon or in said premises alcoholic liquor as defined by the laws of the state of Kansas relating thereto: Provided, that the provisions of the foregoing subsections (h) and (k) shall not apply if such place of business or premises are also currently licensed as a club under a license issued by the state director of alcoholic beverage control.

Within twenty (20) days after the order of the board revoking or suspending any license the licensee may appeal to the district court of the county in the manner as now provided, by law in appeals from the probate court: Provided, that any appeal taken from an order revoking or suspending any such 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 such person or any person acting for or on his behalf, for a period of six (6) months thereafter.

SECTION 10. Relationship of Retailer or Manufacturers, Distributors, Agents, and Wholesalers. No manufacturer, distributor, agent or wholesaler shall, directly or indirectly, sell, supply, furnish, give or pay, loan or lease any furnishings, fixtures or equipment on the premises of a place of business, of a licensee authorized under this ordinance to sell cereal malt beverages at retail, nor shall he, directly or indirectly, pay for any such license, or advance, furnish, lend or give money for payment of such licensee, or purchase or become the owner of any note, mortgage or other evidence of indebtedness for such licensee or any form of security therefor, nor shall such manufacturer, distributor or wholesaler, directly or indirectly, be interested directly or indirectly or as owner or part owner of said premises or as lessee or lessor thereof, in any premises upon which cereal malt beverages are sold at retail. No manufacturer, distributor or wholesaler, shall directly or indirectly or through a subsidiary or affiliate, or by any officer, director of firm or such manufacturer, distributor or wholesaler, furnish, give, lend or rent any interior decorations other than sign, costing in the aggregate more than One Hundred Dollars in any one establishment on which products of the manufacturer, distributor or wholesaler are sold. No person engaged in the business of manufacturing distributing or wholesaling cereal malt beverages shall, directly or indirectly, pay for, advance, furnish or lend money for the payment of any license for another.

Any licensee who shall permit or assent, or be a party in any way to any violation or infringement of the provisions of this section, shall be deemed guilty of a violation of this ordinance, and any money loaned contrary to a provision of this ordinance shall not be recovered back, or any note, mortgage or other evidence of indebtedness or security, or any lease or contract obtained or made contrary to this ordinance shall be unenforceable and void. No wholesaler or distributor shall sell any cereal malt beverage to any person who has not secured a license as provided for in this ordinance.

SECTION 11. Wholesalers and Distributors. It shall be unlawful for any wholesaler and or distributor, his or its agents or employees to sell and or to deliver cereal malt beverages within this city to persons authorized under this ordinance to sell the same within this city unless such wholesaler or distributor has first secured a license from the Department of Inspections and Registration of the State of Kansas authorizing such sales.

SECTION 12. Curb Service Prohibited. No licensee shall furnish or permit to be furnished curb service to persons in cars or vehicles parked in the street or sidewalk or roadway near such licensee's place of business.

SECTION 13. It shall be unlawful for any person under the age of legal consumption of cereal malt beverage to be in or upon the premises of any tavern located in the City of Haven, except when accompanied by parent, guardian or adult spouse.

SECTION 14. It shall be unlawful for any owner or operator of a tavern or any other person to permit any person under the legal age of consumption of cereal malt beverage, except when accompanied by parent, guardian, or adult spouse, to be in or remain in any tavern within the corporate limits of the City of Haven.

SECTION 15. Any person violating any of the provisions of this ordinance shall, upon conviction thereof, be fined not exceeding One Hundred Dollars (\$100.00) or imprisoned not exceeding three (3) months or both so fined and imprisoned.

SECTION 16. Ordinance No. 191 passed and approved by the governing body on the 1st day of May, 1937; and Ordinance No. 436A passed and approved by the governing body on the 3rd day of December, 1984; and Ordinance No. 436B passed and approved by the governing body on the 17th day of March, 1986, are hereby repealed.

SECTION 17. Saving Clause. Should any court declare any section, clause, or provision of this ordinance to be invalid, such decision shall affect only such section, clause or provision declared invalid and shall not affect any other section, clause or provision of the ordinance.

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SECTION 18. Take Effect. This ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

PASSED AND APPROVED THIS _____ DAY OF _____, 1994.

Mayor

ATTEST:

City Clerk