

RESOLUTION NO. 2019-04

A RESOLUTION REGULATING ENHANCED CEREAL MALT BEVERAGE AND DRINKING ESTABLISHMENTS

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, KANSAS:

Section 1. GENERAL PROVISIONS

DEFINITIONS. 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.

PUBLIC SALE. It shall be unlawful for any person to sell, serve or dispense any enhanced cereal malt beverage in any public place not licensed to sell, serve or dispense such beverage at such public place within or under the jurisdiction of the County.

RESTRICTION ON LOCATION. (A) No enhanced cereal malt beverage shall be sold or served by a person holding a license or permit from the County whose place of business or other premises are located within 200 feet of any church or school, said distance to be determined by measuring in a direct line between any entrance or exit to any church or school. For purposes of this subsection, any portion of a four (4) year college shall not be considered as a church or school building, when the buildings are used for the purpose of conducting religious services or educational activities.

B) The distance location of subsection (A) above shall not apply to a club, drinking establishment, caterer, temporary permit holder or establishment, holding an enhanced cereal malt beverage license when the license or permit applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.

C) No license or permit shall be issued for the sale of enhanced cereal malt beverage if the building or use does not meet the zoning ordinance requirements of the County or conflicts with other County laws, including building and health codes.

Section 2. ENHANCED CEREAL MALT BEVERAGES

LICENSE REQUIRED OF RETAILERS. (A) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail or consumption on the premises without a license for each place of business where enhanced cereal malt beverages are 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. It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages only for consumption on the premises, to sell any enhanced cereal malt

- A) The name and residence of the applicant and how long he/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/she has not within 2 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 and/or drugs, or the violation of any other intoxicating liquor law of any state or of the United States.
- F) Such additional information as may be required by the governing body by Resolution.

SAME; ADDITIONAL APPLICATION PROCEDURES. (A) Each application for a general retailer's license or for an enhanced cereal malt beverage drinking establishment is subject to inspection by the County certifying that the premises to be licensed complies with the provision's resolution.

B) Each 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 Lane County Sheriff for investigation of the applicant. It shall be the duty of the Lane County Sheriff to investigate such applicant to determine whether he/she is qualified as a licensee under the provisions of this chapter. The Sheriff shall report to the County Clerk no later than five (5) business 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.

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

D) 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 have been reviewed by the above County departments.

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

- A) A person who has not been a resident in good faith of the State of Kansas for at least one (1) year immediately preceding application and a resident of Lane County for at least six (6) 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/she resides;
- D) A person who, within two (2) years immediately preceding the date of making application, has 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 and/or drugs, 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 Lane 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 a 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 enhanced cereal malt beverage laws of this state.
- H) 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.
- 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.

LICENSE PERIOD; NOT TRANSFERABLE. All licenses issued in accordance with the provisions of this ordinance shall be A) for a term of one (1) year and shall not be transferable to another person or to another location.

LICENSE GRANTED; DENIED. A) The record of the County Clerk 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.

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

SUSPENSION OF LICENSE. The Lane County Sheriff shall have the authority to give notice of intent to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this resolution or other laws pertaining to enhanced cereal malt beverages, which violation does not in his/her judgement justify a recommendation of revocation. Hearing will be held at the next Board of County Commissioner's meeting or a special meeting if so called.

LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY. The governing body of Lane County, upon five (5) 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 suspensions or revocation shall be for 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 article;
- 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/her manager or employee permitting any intoxicated person to remain in such place selling enhanced cereal malt beverages;
- D) The sale of enhanced cereal malt beverages to any person under 21 years of age;
- E) For permitting any gambling in or upon any premises licensed under this article;
- F) For permitting any person to mix drinks with materials purchased in any premises licensed under this article or brought into the premises for this purpose;
- G) For the employment of any person under 21 years of age in dispensing enhanced cereal malt beverages;
- H) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;
- I) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premises licensed under this article;
- J) The nonpayment of any license fees;
- K) If the licensee has become ineligible to obtain a license under this section:

of any licensee, nor shall any new license be issued to such person or any person acting for or on his/her behalf, for a period of one (1) year thereafter.

SALES AND CONSUMPTION ON PUBLIC PROPERTY. No person shall sell, serve, give away, or consume any enhanced cereal malt beverage upon any real property owned by or under the control of Lane County, without a license granted by the Lane County Commissioners which may be issued for a period of not to exceed five (5) days. The license shall designate the dates for which it has been issued and shall designate a specific area within which enhanced cereal malt beverage can be sold or consumed.

LICENSE; IN ADDITION TO OTHER LICENSE. The license issued under this article shall be in addition to any other licenses required for the operation of any other business for which a license is required.

WHOLESALE 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 County, to persons authorized under this article to sell the same within this County unless such wholesaler and/or distributor has first secured a license from the Director of Revenue, State Commissioner of Revenue and Taxation of the State of Kansas authorizing such sales.

BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations. Any licensee who fails to observe any of the following regulations shall be subject to suspension and/or revocation of their business license.

- 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 opened to the inspection of the Lane County Sheriff and Health Officers of the County and State.
- C) 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.
- D) 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.
- E) 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.
- F) 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.
- G) 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.

SANITARY CONDITIONS REQUIRED. Any licensee who fails to meet the following minimum sanitary conditions shall be subject to suspension and/or revocation of their business license.

- A) 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.
- B) The licensed premises shall have at least one (1) restroom for each sex easily accessible at all times to its patrons and employees.
- C) Each restroom shall be equipped with at least one (1) 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.
- D) Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable.
- E) The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided.
- F) Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered.
- G) Each restroom 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 County Health Office or designee.

MINORS ON PREMISES. A) It shall be unlawful for a person under 21 years of age 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 21 years of age is an employee of the licensed establishment, or is accompanied by his/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 enhanced cereal malt beverages for on-premised consumption.

SAME; NOTICE TO PUBLIC REQUIRED. It shall be unlawful for the licensee of premises under this article to fail to post a conspicuous notice on or near all doors for which access to a licensed premises may be obtained advising that the entering or remaining upon the licensed premises or the purchase or consumption of enhanced cereal malt beverage is not permitted by any person who has not attained 21 years of age.

SALE OR GIFT TO MINOR; ALLOW TO PURCHASE. A) It shall be unlawful for any person to sell or give any enhanced cereal malt beverage to any person under 21 years of age.

B) It shall be unlawful for any person to knowingly permit any person under 21

Section 3. DRINKING ESTABLISHMENTS

LICENSE REQUIRED. It shall be unlawful for any person granted a drinking establishment license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the County without first obtaining a County license from the County Clerk.

LICENSE FEE. A) There is hereby levied an annual license fee in the amount of \$75.00 on each drinking establishment located in the County which has a drinking establishment license issued by the State Director of Alcoholic Beverage Control, which fee shall be paid before business is begun under an original state license and within five (5) days after any renewal of a state license.

B) All applications for new or renewal of County licenses shall be submitted to the County Clerk. Upon presentation of a state liquor or enhanced cereal malt beverage license, payment of the County license fee and the license application, the County Clerk shall issue a County license for the period covered by the State license, if there are no conflicts with any zoning or alcoholic beverage resolutions of the County.

C) The license period shall extend for the period covered by the State license. No license fee shall be refunded for any reason.

D) Every licensee shall cause the County drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

BUSINESS REGULATIONS. A) No drinking establishment hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 o'clock a.m. and 9:00 o'clock 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. If the drinking establishment only holds an enhanced cereal malt beverage license then enhanced cereal malt beverage can only be sold between the hours of 6:00 o'clock a.m. and 12:00 o'clock p.m. (midnight).

C) No alcoholic beverages or enhanced cereal malt beverages shall be given, sold or traded to any person under 21 years of age.

Section 4. TEMPORARY PERMITS

PERMIT REQUIRED. It shall be unlawful for any person granted a temporary permit by the State of Kansas to sell or serve any alcoholic liquor and/or enhanced cereal malt beverage within the County without first obtaining a local temporary permit from the County Clerk.

PERMIT FEE. A) There is hereby levied a temporary permit fee in the amount of \$75.00 per day on each group or individual holding a temporary permit issued by the State Director of Alcoholic Beverage Control authorizing sales within the County, which fee

COUNTY TEMPORARY PERMIT. A) It shall be unlawful for any person to conduct an event under a state-issued temporary permit without first applying for a local temporary permit at least ten (10) days before the event. Written application for the local temporary permit shall be made to the County Clerk and shall clearly state:

1. The name of the applicant;
2. The group for which the event is planned;
3. The location of the event;
4. The date and time of the event;
5. Any anticipated need for police, fire or other County services.

B) Upon presentation of a state temporary permit, payment of the County's temporary permit fee and a written application as provided for in subsection (A), the County Clerk shall issue a local temporary permit to the applicant if there are no conflicts with any zoning or other Resolutions of the County.

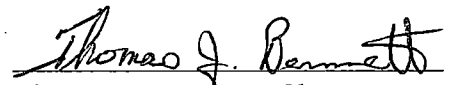
C) The County Clerk shall notify the Lane County Sheriff whenever a temporary permit has been issued and forward a copy of the permit and application to the Lane County Sheriff.

PERMIT REGULATIONS. A) No temporary permit holder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 o'clock a.m. and 9:00 o'clock a.m. at any event for which a temporary permit has been issued.

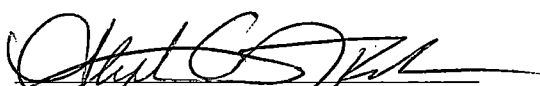
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C) No alcoholic beverage shall be given, sold or traded to any person under 21 years of age.

THIS RESOLUTION IS HEREBY REVIEWED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, KANSAS on this 17th day of August, 2019.


Thomas J. Bennett, Chairperson

ATTEST:


Stephanie M. Terhune, County Clerk