

ORDINANCE NUMBER 19-10997

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE III, SECTIONS 5-66, 5-67, 5-69, 5-70, 5-72, 5-80, 5-91, 5-94, 5-99, AND 5-102 PERTAINING TO THE SALE OF BEER NOT MORE THAN 6% ALCOHOL BY VOLUME BY CEREAL MALT BEVERAGE RETAILERS.

BE IT ORDAINED by the Governing Body of the City of Salina, Kansas:

Section 1. Section 5-66 of the Salina Code is hereby amended to read as follows:

Sec. 5-66. Definitions. As used in this article, the words and phrases herein defined shall have the following meanings unless the context otherwise requires:

- (1) *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, as defined in K.S.A. 41-2729, and amendments thereto, but does not include any such liquor which is more than three and two-tenths (3.2) percent alcohol by weight.
- (2) *Enhanced cereal malt beverage* means beer, as defined by section 5-16, containing not more than 6% alcohol by volume when such beer is sold or offered for sale by a person who does not possess a license, permit, or other legal authorization to do so pursuant to other articles of this chapter.
- (3) *Licensee* is a person who has a license as herein required.
- (4) *Place of business* shall mean any place at which cereal malt beverages or enhanced cereal malt beverages are sold.
- (5) *Retailer* means any person who sells or offers for sale any cereal malt beverage or enhanced cereal malt beverage for use or consumption and not for resale in any form.
- (6) *Special event CMB retailer's permit* is a permit issued to pursuant to K.S.A. 41-2703(e) and this article that allows the permit holder to offer for sale, sell and serve cereal malt beverage for consumption on unpermitted premises, which may be open to the public.
- (7) *Wholesaler or distributor* shall mean individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this article, to persons, copartnerships, corporations and associations authorized by this article to sell cereal malt beverages or enhanced cereal malt beverages at retail.

Section 2. Section 5-67 of the Salina Code is hereby amended to read as follows:

Sec. 5-67. Hours, days, sales and consumption prohibited.

(a) No person shall sell at retail cereal malt beverage or enhanced cereal malt beverage:

- (1) Between the hours of 12:00 midnight and 6:00 a.m.;
- (2) In the original package before 12:00 noon or after 8:00 p.m. on Sundays;
- (3) On Easter Sunday; or
- (4) For consumption on the licensed premises 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 thirty (30) percent of its gross receipts from the sale of food for consumption on the licensed premises.

(b) Subsection (a) notwithstanding, cereal malt beverages may be sold on premises which are licensed pursuant to both the Kansas cereal malt beverage act and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.

Section 3. Section 5-69 of the Salina Code is hereby amended to read as follows:

Sec. 5-69. Place of business to be open to public and police.

A place of business shall be open to the public and to the police at all times during business hours; provided that a premises licensed as a club under a license issued by the state director of alcoholic beverage control need only be open to the police.

Section 4. Section 5-70 of the Salina Code is hereby amended to read as follows:

Sec. 5-70. Possessing alcoholic liquor on premises.

No person shall have any alcoholic liquor except enhanced cereal malt beverages in such person's possession while in a place of business, unless the premises are currently licensed, permitted, or legally authorized to possess such alcoholic liquor under applicable law, including but not limited to, K.S.A. 41-301 *et seq.*; K.S.A. 41-701 *et seq.*; the club and drinking establishment act, K.S.A. 41-2601 *et seq.*; or other provisions of this chapter.

Section 5. Section 5-72 of the Salina Code is hereby amended to read as follows:

Sec. 5-72. Misrepresenting age.

No person under the legal age for consumption of cereal malt beverage or enhanced cereal malt beverage shall represent that he or she is of said age for the purpose of asking for, purchasing or obtaining by any means any cereal malt beverage or enhanced cereal malt beverage from any person.

Section 6. Section 5-80 of the Salina Code is hereby amended to read as follows:

Sec. 5-80. Wholesalers, distributors to be licensed by state.

It shall be unlawful for any wholesaler or distributor, his or its agents or employees, to sell or deliver cereal malt beverages or enhanced cereal malt beverages within this city to persons authorized under this article to sell the same within the city unless such wholesaler or distributor has first secured a license from the director of revenue of the state authorizing such sales.

Section 7. Section 5-91 of the Salina Code is hereby amended to read as follows:

Sec. 5-91. Required.

- (a) No person shall sell any cereal malt beverage or enhanced cereal malt beverage at retail without first having secured:
- (1) A license for each place of business which such person desires to operate within the corporate limits of the city, as herein provided and a person having only a license to sell at retail cereal malt beverages or enhanced cereal malt beverages as a retailer for consumption off the premises as designated in this article shall not sell any such beverage in any other manner, and a person having only a license to sell cereal malt beverages or enhanced cereal malt beverages as a general retailer shall not sell any such beverage in any other manner than that covered by such license; provided, that a general retailer may also secure a license as a retailer for consumption off the premises on complying with the requirements of this article and securing an additional license as a retailer for consumption off the premises; or
 - (2) A special event CMB retailer's permit which shall allow the permit holder to offer for sale, sell and serve cereal malt beverage for consumption on unpermitted premises, which may be open to the public, subject to the following:
 - a. A special event retailer's permit shall specify the premises for which the permit is issued;
 - b. A special event retailer's permit shall be issued for the lesser of the duration of the special event or three (3) consecutive days, excluding Sundays, the dates and hours of which shall be specified in the permit; and

- c. A special event retailer's permit shall not be transferable or assignable.
- (b) A special event retailer's permit holder shall not be subject to the provisions of the beer and cereal malt beverage keg registration act, K.S.A. 41-2901 *et seq.*, and amendments thereto.
- (c) For the purpose of this division, the term "retail license" shall refer to both a retail license and a special event retailer's permit.
- (d) A special event retailer's permit shall be issued by the city manager, with or without conditions, based upon the information contained in a written application on a form provided by the city and consideration on the basis of criteria established by resolution of the governing body.
- (e) The above paragraphs notwithstanding, nothing in this section shall be construed to limit the sale of cereal malt beverages or enhanced cereal malt beverages as permitted under other licenses, permits, or legal authorizations, including, but not limited to licenses, permits, or legal authorizations issued pursuant to K.S.A. 41-301 *et seq.*; K.S.A. 41-701 *et seq.*; the club and drinking establishment act, K.S.A. 41-2601 *et seq.*; or other provisions of this chapter.
- (f) All valid licenses, permits, or legal authorizations issued pursuant to this article prior to April 1, 2019, shall be construed to permit the sale at retail of enhanced cereal malt beverages on and after April 1, 2019.
- (g) Provisions of this chapter pertaining to licenses, permits, or other legal authorizations for alcoholic liquor sales or consumption notwithstanding, this section shall be construed to allow enhanced cereal malt beverage sales at retail pursuant to a valid retail license.

Section 8. Section 5-94 of the Salina Code is hereby amended to read as follows:

Sec. 5-94. Persons not entitled to a retail license.

- (a) No retail license required by this division shall be issued to:
 - (1) *Residency.* A person who is not a resident of the county and who has not been a resident in good faith of the state for at least one (1) year prior to the application and a resident of the county for at least six (6) months prior to the application;
 - (2) *Good character and reputation.* A person who is not of good character and reputation in the community in which he resides;
 - (3) *Citizenship.* A person who is not a citizen of the United States;
 - (4) *Criminal record.* A person who within two (2) years immediately preceding the date of application approval has been convicted of, released from incarceration for, or released from probation or parole for a felony, any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor, or violation of any other intoxicating liquor law of any state or of the United States;

- (5) *Partnership.* A partnership, unless one of the partners is a resident of the county, and unless all the members of such partnership shall otherwise be qualified to obtain a license;
 - (6) *Corporation.* A corporation, if any manager, officer or director thereof or any stockholder owning in the aggregate more than twenty-five (25) percent of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than citizenship and residency requirements;
 - (7) *Manager or agent.* A person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required by the licensee.
 - (8) *Spouse ineligible.* 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 shall not apply to a renewal license.
 - (9) *Spouse convicted of a crime.* A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act.
- (b) After examination of an application for a retailer's license, the board of commissioners may deny a license to a person, partnership, or corporation if any manager, officer, or director thereof, or any stockholder owning in the aggregate more than twenty-five (25) percent of the stock of such corporation, has been an officer, manager, director, or a stockholder owning in the aggregate more than twenty-five (25) percent of the stock, of a corporation which has:
- (1) Had a retailer's license revoked under K.S.A. 41-2708, and amendments thereto; or
 - (2) Been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

The board of commissioners delegates to the city manager the authority to grant or deny a license consistent with the criteria specified in subsection 5-102(e).

Section 9. Section 5-99 of the Salina Code is hereby amended to read as follows:

Sec. 5-99. Transferability.

- (a) The retail license required by this division shall not be transferable under any circumstances from one person to another or from or to any firm, copartnership, corporation or association.
- (b) The retail license required by this division shall apply only to the premises described in the application and in the license issued thereon, and only one location shall be so described in each license. After such retail license has been granted for a particular premises, the license may not be transferred by the same licensee from one location to another until the city clerk shall upon being authorized by the board of commissioners endorse upon the license permission to transfer the same to another location, but in order to obtain such permission the

retail licensee shall file an application for retail license, which shall be subject to examination and investigation the same as if it were a new application and a statement under oath which shall show that the premises to which removal is to be made comply in all respects with the requirements of this act. No such removal shall be made by any licensee until his license has been endorsed to that effect by the city clerk.

- (c) A retail license to sell cereal malt beverages and enhanced cereal malt beverages shall be purely a personal privilege, expiring on the thirty-first day of December in the year issued, unless sooner suspended or revoked, as in this act provided, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, except as stated in subsections (a) and (b) above, or subject to being encumbered or hypothecated. Such license shall not descend by the laws of testate or interstate succession, but it shall cease or expire upon the death of the licensee.
- (d) Whenever an application is made for a retail license to be issued to a particular premise upon which there is a current valid license, the current retail license shall be delivered to the city clerk and the city clerk shall cancel the same upon the records of the city as of the date of issuance of the new license.

Section 10. Section 5-102 of the Salina Code is hereby amended to read as follows:

Sec. 5-102. License review; revocation, suspension procedure; initial appeal.

- (a) In accordance with K.S.A. 41-2708, the board of commissioners may cause to be revoked or suspended a license for the reasons set forth herein. The board of commissioners delegates to the city manager the authority to revoke or suspend a license consistent with the criteria specified in subparagraph (e). The suspension period shall be for a period not less than seven (7), but no more than thirty (30) calendar days. The city manager may, upon five (5) days' notice to a retailer of cereal malt beverages or enhanced cereal malt beverages licensed under this division, conduct a hearing to determine whether to revoke or suspend such license for any one (1) of the following reasons:
 - (1) The licensee has violated the provisions of K.S.A. 41-2701 *et seq.*, or this article and amendments thereto, or any other ordinance of the city prescribing rules or regulations relating to cereal malt beverages or enhanced cereal malt beverages as herein defined;
 - (2) Drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business;
 - (3) The sale of cereal malt beverages or enhanced cereal malt beverage to any person under the legal age for consumption of cereal malt beverage or enhanced cereal malt beverage;
 - (4) Permitting any person to mix drinks with materials purchased in or upon the place of business or brought in for that purpose;

- (5) The sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor except alcoholic liquor that also qualifies as an enhanced cereal malt beverage;
 - (6) The licensee has been convicted of a violation of the beer and cereal malt beverage keg registration act; or
 - (7) The failure to display in a prominent place at or near the entrances to the place of business signs stating that no person under the legal age for consumption of cereal malt beverage shall be permitted on the premises; provided however, this reason shall not apply to the premises of a retailer who sells cereal malt beverages or enhanced cereal malt beverages for consumption off the premises only, or to places where the major income is from the sale of food for consumption on the premises, or a premise for which a bowling alley license has been issued by the city for the current year, or the Tony's Pizza Event Center.
- (b) In accordance with K.S.A. 41-2708, the board of commissioners shall revoke or suspend a license for the reasons set forth herein. The board of commissioners delegates to the city manager the authority to revoke or suspend a license consistently with the criteria specified in subparagraph (e). The suspension period shall be for a period not less than seven (7), but no more than thirty (30) calendar days. The city manager shall, upon five (5) days' notice to a retailer of cereal malt beverages or enhanced cereal malt beverages licensed under this division, conduct a hearing to determine whether to revoke or suspend such license for any one (1) of the following reasons:
- (1) The licensee has fraudulently obtained the license by giving false information in the application therefor;
 - (2) The licensee has become ineligible to obtain a license;
 - (3) The nonpayment of any license fees;
 - (4) Permitting any gambling in or upon the licensee's place of business;
 - (5) The employment of persons under eighteen (18) years of age in dispensing or selling cereal malt beverages or enhanced cereal malt beverages;
 - (6) The employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two (2) years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States, including but not limited to laws pertaining to the operation or attempted operation of a motor vehicle while under the influence of intoxicating liquor or drugs; or
 - (7) There has been a violation of K.S.A. 21-4106 or 21-4107, prior to their repeal, or K.S.A. 21-6204, and amendments thereto, in or upon the licensee's place of business.

- (c) The provisions of paragraphs (a)(4) and (a)(5) shall not apply if the place of business or premises also are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.
- (d) A licensee shall be deemed to be responsible for any act or conduct of any employee on the premises that is in violation of state law or of the ordinances of the city, if such licensee knew or should have known or had actual or constructive knowledge of such unlawful act or conduct of such employee, and as such the unlawful act or conduct of such employee can be attributed to the licensee for purposes of considering whether to revoke or suspend a license issued under this division.
- (e) In determining whether to revoke or suspend the license or in determining the length of a suspension, the city manager shall consider the facts as presented, together with any matters of mitigation, extenuation, and aggravation, including but not limited to:
 - (1) The number of past violations during the preceding three (3) years from the most recent alleged violation;
 - (2) Whether the violation was committed by the licensee, owner, manager or employee; and
 - (3) Whether the licensee, owner, or management took steps to avoid the violation, including but not limited to, training and disciplinary policies and practices.
- (f) The determination of any of the acts or omissions listed in paragraphs (a) and (b) of this section and the resulting status of the license shall be made by the city manager. The city manager shall render a written decision citing the reasons for such decision within thirty (30) days after the hearing.
- (g) Within twenty (20) days after any decision of the city manager revoking or suspending any license, the licensee may appeal the city manager's decision to the board of commissioners by filing a written appeal with the city clerk. Upon receiving a written appeal, the board of commissioners shall review the findings and reasons for the decision of the city manager and conduct further hearings if it deems necessary. Within thirty (30) days of receipt of the written notice of appeal, the board of commissioners shall issue an order upholding, reversing, or modifying the decision of the city manager. Any appeal taken from an order of the city manager suspending or revoking a license shall not suspend the city manager's decision to suspend.

Section 11. Repealer. Existing sections 5-66, 5-67, 5-69, 5-70, 5-72, 5-80, 5-91, 5-94, 5-99, and 5-102 are hereby repealed.

Section 12. Summary of ordinance for publication. This ordinance shall be published by the following summary:

Ordinance No. 19-10997 Summary

On March 25, 2019, the City of Salina, Kansas, passed Ordinance No. 19-10997. The ordinance amends Chapter 5, Article III, Sections 5-66, 5-67, 5-69, 5-70, 5-72, 5-80, 5-91, 5-94, 5-99, and 5-102. The amendments of such code sections pertain to the sale of beer not more than 6% alcohol by volume by cereal malt beverage retailers. A complete copy of the ordinance is available at www.salina-ks.gov or in the office of the city clerk, 300 W. Ash Street, free of charge. This summary is certified by the city attorney.

Section 13. Effective date. This ordinance shall be in full force and effect from and after its adoption and publication by summary once in the official city newspaper.

Introduced: March 18, 2019
Adopted: March 25, 2019

Trent W. Davis, M.D., Mayor

[SEAL]
ATTEST:

Shandi Wicks, CMC, City Clerk

Certification of Publication Summary:

Greg A. Bengtson, City Attorney