

ORDINANCE NO. _____

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE OR BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF THAYER, KANSAS AND REPEALING AND REPLACING CHAPTER III, ARTICLE 2 OF THE CODE OF THE CITY OF THAYER, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF THAYER:

Section 1. DEFINITIONS

- (a) "CEREAL MALT BEVERAGE" means cereal malt beverage as that term is defined in K.S.A. 41-2701, and amendments thereto.
- (b) "LICENSE" means a license issued by the City of Thayer under the licensing authority accorded to cities by the Kansas cereal malt beverage act, and in accordance with this ordinance, which authorizes retailers so licensed to sell or offer for sale any cereal malt beverage or beer containing not more than 6% alcohol by volume for use or consumption within the corporate limits of the city and not for resale in any form.
- (c) "GENERAL RETAILER" means any person who is licensed under the Kansas cereal malt beverage act and in accordance with this ordinance and who sells or offers for sale any cereal malt beverage or beer containing not more than 6% alcohol by volume for use or consumption and not for resale in any form.
- (d) "LIMITED RETAILER" means any person who is licensed under the Kansas cereal malt beverage act and in accordance with this ordinance and who sells or offers for sale, in the original and unopened containers, and not for consumption on the premises, any cereal malt beverage or beer containing not more than 6% alcohol by volume.
- (e) "PERSON" means any individual, firm, partnership, corporation or association.
- (f) "LICENSED PREMISES" means those areas described in an application for a cereal malt beverage retailer license issued pursuant to K.S.A. 41-2702, and amendments thereto, that are under the control of the applicant and that are intended as the area in which cereal malt beverage or beer containing not more than 6% alcohol by volume is to be served pursuant to the applicant's license.

Section 2. LICENSE REQUIRED OF RETAILERS

- (a) It shall be unlawful for any person to sell any cereal malt beverage or beer containing not more than 6% alcohol by volume at retail without a license for each place of business where cereal malt beverages or beer containing not more than 6% alcohol by volume are to be sold at retail.
- (b) It shall be unlawful for any person, having a license to sell cereal malt beverage or beer containing not more than 6% alcohol by volume at retail only in the original and unopened containers and not for consumption on the premises, to sell cereal malt beverage or beer containing not more than 6% alcohol by volume in any other manner.
- (c) Retailers' licenses shall be issued annually and shall be valid for a specified calendar year.

Section 3. 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 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.

Each 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 ordinance. 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.

Section 4. LICENSE APPLICATION PROCEDURES

- (a) All applications for a first time or renewed license for the sale of cereal malt beverage or of beer containing not more than 6% alcohol by volume shall be submitted to the city clerk 10 days in advance of the governing body meeting at which the license will be considered.
- (b) The city clerk's office shall notify the holder of an existing license 45 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 the applications are received. The police department will contact the KBI for a record check on all applicants. The fire department and health department will inspect the premises to be licensed. Each department will then recommend approval, or disapproval, of each application within [*city to fill in*] 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 or that has not been reviewed by the above city departments.
- (e) An applicant who has not previously held a license for the sale of cereal malt beverage or beer containing not more than 6% alcohol by volume in the city shall attend the governing body meeting when the application for a new license will be considered.

Section 5. 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 calendar 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.

Section 6. LICENSE TO BE POSTED

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

Section 7. 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 Neosho 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 limited liability company, unless it meets the qualifications for licensure of a corporation under K.S.A. 41-2703, and amendments thereto, except only those individuals owning in the aggregate 25% or more of the ownership interest in such limited liability company shall be required to meet the qualifications for an individual to obtain a license. Any limited liability company applying for a retailer's license shall submit a copy of its articles or organization and operating agreement to the director of alcoholic beverage control of the Kansas department of revenue.
- (i) 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.
- (j) 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.

Section 8. RESTRICTION UPON LOCATION

- (a) No license shall be issued for the sale at retail of any cereal malt beverage or beer containing not more than 6% alcohol by volume 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 beer containing not more than 6% alcohol by volume at any place within the city limits that is within a 200-foot radius of any church, school or library.
- (c) The provisions at (a) and (b) shall not apply to any establishment holding a club or drinking establishment license issued by the State of Kansas.
- (d) The distance limitation of subsection (b) above shall not apply to any establishment holding a cereal malt beverage license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation. The governing body shall grant such a waiver only following public notice and hearing.

Section 9. LICENSE FEE.

The rules and regulations regarding license fees shall be as follows:

- (a) General Retailer -- for each place of business selling cereal malt beverages or beer containing not more than 6% alcohol by volume at retail, \$175.00 per calendar year.
- (b) Limited Retailer -- for each place of business selling only at retail cereal malt beverages or beer containing not more than 6% alcohol by volume in original and unopened containers and not for consumption on the premises, \$50.00 per calendar year.

The full amount of the license fee shall be required regardless of when 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.

Section 10. 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 beverages or to beer containing not more than 6% alcohol by volume, which violation does not in his 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.

Section 11. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY

The governing body of the city, upon five days' written notice, to a person holding a license 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 ordinance or has become ineligible to obtain a license under the provisions of this ordinance;
- (c) Drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business.
- (d) The sale of cereal malt beverages or beer containing not more than 6% alcohol by volume to a 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 beverages or beer containing not more than 6% alcohol by volume;
- (h) For the employment of a persons the licensee knows has been, within the preceding two years, adjudged guilty of a felony or of a violation of any laws relating to intoxicating liquor in this state, another state or the United States;
- (i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed, except beer containing not more than 6% alcohol by volume;
- (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 club or drinking establishment by the State of Kansas.

Section 12. SAME; APPEAL

Pursuant to K.S.A. 41-2708(d), the licensee, within 20 days after the order of the governing body revoking any license, may appeal to the District Court of Neosho 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.

Section 13. 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 \$50.00. 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 calendar year for which a current license is held by the licensee.

Section 14. 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 beverages or beer containing not more than 6%

alcohol by volume within the city, to persons authorized to sell the same within this city unless such wholesaler and/or distributor has first secured a license authorizing such sales from the State of Kansas.

Section 15. 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 beer containing not more than 6% by volume may be sold or dispensed; (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 Sunday; (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 or beer not more than 6% by volume for consumption on the premises, which derive not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises.
- (d) Cereal malt beverages or beer containing not more than 6% alcohol by volume 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 or drinking establishment by the State of Kansas.
- (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 of Kansas 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 of beer containing not more than 6% alcohol by volume 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 to dispense cereal malt beverages or beer containing not more than 6% alcohol by volume.
- (l) No licensee shall knowingly employ any person who, within the preceding two years, has been adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States.
- (m) A licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage or beer not more than 6% by volume, if;
 - (1) The licensee's place of business is licensed only to sell at retail cereal malt beverage or beer containing not more than 6% by volume in the original package and not for consumption on the premises; or
 - (2) The licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501, and amendments thereto, and not less than 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.

Section 16. PROHIBITED CONDUCT ON PREMISES

The following conduct by those persons licensed under this ordinance pursuant to the Kansas cereal malt beverage act, and by the manager or employee of any establishment licensed under the Kansas cereal malt beverage act and in accordance with this ordinance, 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 male's/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.

Section 17. 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 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.

Section 18. This ordinance shall be published one time in the official city newspaper.

Section 19. This ordinance shall take effect and be in force from and after April _____, 2020.

PASSED AND APPROVED this ___ day of _____, 2020.

Mayor

ATTEST:

City Clerk

[SEAL]