

(Summary Publish in the Leavenworth Times August 13, 2021 and August 20, 2021)

**ORDINANCE NO. 8171**

**AN ORDINANCE REGARDING ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGES, AMENDING SECTIONS 6-1, 6-2, 6-5, 6-7, 6-34, 6-36, 6-37, 6-44, 6-45, 6-93, 6-98, AND 6-220, AND ESTABLISHING NEW SECTIONS 6-49 AND 6-221, OF CHAPTER 6 OF THE LEAVENWORTH CODE OF ORDINANCES, ENTITLED "ALCOHOLIC BEVERAGES AND CEREAL MALT BEVERAGES".**

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

**Section 1.** Section 6-1 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alcohol* means the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

*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.

*Beer*, when its meaning is not enlarged, modified or limited by other words, means a beverage containing more than 3.2 percent of alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter and the like having such alcoholic content.

*Board* means the state alcoholic beverage control board of review.

*Caterer* means an individual, partnership or corporation which sells alcoholic liquor by the individual drink and provides services related to the serving thereof on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit selling alcoholic liquor in accordance with the terms of such permit.

*Cereal malt beverage* or *CMB* means any fermented but undistilled liquor brewed or made from malt or from malt or from a mixture of malt or malt substitute, or any flavored malt beverage, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

*Class A club* means premises which are 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, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (referred to in this chapter as members), and their families and guests accompanying them.

*Class B club* means 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.

*Club* means a Class A or Class B club.

*Director* means the state director of alcoholic beverage control.

*Distributor* means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this chapter, or cereal malt beverage or enhanced cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2701 and amendments thereto.

*Domestic beer* means beer which contains not more than 15 percent alcohol by weight and which is manufactured in this state.

*Domestic fortified wine* means wine which contains more than 14 percent, but not more than 20 percent alcohol by volume and which is manufactured in this state.

*Domestic table wine* means wine which contains not more than 14 percent alcohol by volume and which is manufactured without rectification or fortification in this state.

*Drinking establishment* has the meaning provided by K.S.A. 41-2601 and amendments thereto.

*Enhanced cereal malt beverage* means cereal malt beverage, as defined herein, and the term "enhanced cereal malt beverage" also includes beer containing not more than six percent alcohol by volume when such beer is sold by a retailer licensed under the Kansas Cereal Malt Beverage Act and the provisions of this chapter.

*Farm winery* means a winery licensed by the director to manufacture, store and sell domestic table wine and domestic fortified wine.

*Food establishment* has the meaning provided by K.S.A. 65-656 and amendments thereto.

*General retailer* means a person who has a license to sell enhanced cereal malt beverages at retail.

*Legal age for consumption of enhanced cereal malt beverage* means 21 years of age, except that legal age for consumption of cereal malt beverage shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

*Limited retailer* means a person who has a license to sell enhanced cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

*Manufacture* means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer, enhanced cereal malt beverage, or cereal malt beverage.

*Manufacturer* means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package, and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors, beer, enhanced cereal malt beverage, or cereal malt beverage, regardless of its alcoholic content. The term "manufacturer" does not include a farm winery, microdistillery, or a microbrewery.

*Microbrewery* means a brewery licensed by the director to manufacture, store and sell domestic beer.

*Microdistillery* means a facility which produces spirits from any source or substance that is licensed by the director to manufacture, store and sell spirits.

*Minor* means any person under 21 years of age.

*Nonbeverage user* means any manufacturer of any of the products set forth and described in K.S.A. 41-501 and amendments thereto, when the products contain alcohol or wine, and all laboratories using alcohol for non-beverage purposes.

*Original package* means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor.

*Person* shall have the meaning set forth in Section 1-2 of this code.

*Place of business* means any place at which cereal malt beverages, enhanced cereal malt beverages, or alcoholic beverages or both are sold.

*Retailer* means a person who is licensed under the Kansas liquor control act and sells, at retail, or offers for sale at retail, alcoholic liquors or enhanced cereal malt beverages, but does not include a microbrewery, microdistillery, or farm winery.

*Sale* means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether as principal, proprietor, agent, servant or employee.

*Salesperson* means any natural person who:

- (1) Procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage; or
- (2) Is engaged in promoting the sale of alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage, whether the seller resides within the state and sells to licensed buyers within the state, or whether the seller resides without the state and sells to licensed buyers within the state.

*Sell at retail* and *sale at retail* mean and refer to sales for use or consumption and not for resale in any form, and sales to clubs, licensed drinking establishments, licensed caterers, or holders of temporary permits. The term "sell at retail and sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer, or a holder of a state temporary permit.

*Spirits* means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whisky, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substance.

*Supplier* means a manufacturer of alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage or an agent of such manufacturer, other than a salesperson.

*Temporary permit* means a permit issued in accordance with the laws of the state, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises open to the public.

*To sell* means and includes to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell.

*Wholesaler* or *distributor* means any persons, individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, copartnerships, corporations and associations authorized by this chapter to sell enhanced cereal malt beverages or cereal malt beverages at retail.

*Wine* means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries, or other agricultural products, including such beverages containing added alcohol or spirits, or containing sugar added for the purpose of correcting natural deficiencies. The term "wine" shall include hard cider and any other product that is commonly known as a subset of wine.

**Section 2.** Section 6-2 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-2. City-owned properties, generally.**

- (a) It shall be unlawful for any person to have any alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage in his possession upon any public street, highway, alley, sidewalk, inside vehicles, or any other public property unless such alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage is in the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed except as authorized hereinafter.
- (b) Notwithstanding the foregoing, it shall not be a violation of subsection (a) above if the alcoholic liquor or enhanced cereal malt beverage, not in its original unopened package or container, has been removed from licensed premises in accordance with the provisions of K.S.A. 41-2653 regarding "to-go" beverages; provided, that such package or container has been sealed in accordance with such law and has not been opened; and further provided, that nothing in this subsection (b) shall be construed or modifying or exempting any person from the provisions of the Standard Traffic Ordinance, as adopted by the city, regarding the transportation of alcoholic beverages.
- (c) No person shall drink or consume any alcoholic liquor, enhanced cereal malt beverage, or cereal malt beverage upon the public streets, alleys, sidewalks, roads or highways of the city or inside vehicles while upon such public streets, alleys, sidewalks, roads or highways, or in city-owned parks or other facilities or properties, unless authorized as provided in this section.
- (d) The above prohibitions shall not apply during events and the designated areas for such events in the city where:
  - (1) A special event CMB permit has been approved in accordance with article II of this chapter; or
  - (2) A temporary permit has been approved in accordance with article III, division 2, of this chapter, and the event has been approved by the city commission in accordance with K.S.A. 41-719.
- (e) Notwithstanding the foregoing, and pursuant to K.S.A. 41-719(e), as amended, the drinking or consumption of alcoholic liquor is permitted on the following city-owned properties and facilities without further approval from the city commission, provided that a temporary permit or a caterer's license has been approved in accordance with article III, division 2, of this chapter:
  - (1) The community center located on North Esplanade north of Cherokee Street.
  - (2) The Leavenworth Landing Park located east and south of above described community center.
  - (3) The Haymarket Square, located at 7th and Cherokee.
  - (4) The Havens Park, located at 22nd and Ottawa.
  - (5) The Riverfront Park, located at the east end of Dakota Street.
  - (6) Ray Miller Park, located at the corner of 4201 South 4th Street.
  - (7) Leavenworth Public Library, located at 417 Spruce Street.
  - (8) Performing Arts Center, 500 Delaware Street.
- (f) Notwithstanding the foregoing, cereal malt beverages are allowed to be possessed and consumed (but not served or sold) at city parks with a permit issued by the director of parks and recreation, subject to the following requirements:
  - (1) The premises must have been rented from the city by the applicant; in advance;

- (2) Applicant must be 21 years of age or older and a city resident. Applicant is required to remain on the site throughout the function.
- (3) Applications must be submitted to the parks and recreation office at least five working days prior to the event.
- (4) The director of parks and recreation will notify the police department prior to the permitted event.
- (5) Permits may only be issued for the following types of activities:
  - a. Company picnics.
  - b. Fraternal organization picnics.
  - c. Service club picnics.
  - d. Family reunions.
  - e. Other group functions, subject to the discretion of the director of parks and recreation.

The sale or service of cereal malt beverages on or from city-owned properties shall otherwise require a full cereal malt beverage license or a special event CMB permit.

- (g) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50.00 nor more than \$200.00 or by imprisonment for not more than six months, or by both such fine and imprisonment.

**Section 3.** Section 6-5 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-5. Possession and transportation.**

Subject to the limitations provided in this section, the possession and transportation of alcoholic liquor and/or enhanced cereal malt beverages for other than personal use shall be unlawful.

- (1) No person shall transport in any vehicle upon a highway or street any alcoholic liquor or enhanced cereal malt beverage unless such liquor or beverage is:
  - a. In the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed;
  - b. Not in the original unopened package or container, provided that such alcoholic liquor or enhanced cereal malt beverage has been removed from licensed premises in accordance with the provisions of K.S.A. 41-2653 regarding "to-go" beverages; provided, that such package or container has been sealed in accordance with such law and has not been opened; and further provided, that nothing in this subsection (1)b. shall be construed or modifying or exempting any person from the provisions of the Standard Traffic Ordinance, as adopted by the city, regarding the transportation of alcoholic beverages.
  - c. In the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or
  - d. In the exclusive possession of a passenger in a vehicle which is a recreational vehicle, as defined by K.S.A. 75-1212, or a bus, as defined by K.S.A. 8-1406, who is not in the driving compartment of such vehicle or who is in a portion of such vehicle from which the driver is not directly accessible.

Violation of this subsection is a misdemeanor punishable by a fine of not more than \$200.00 or by imprisonment for not more than six months, or both.

- (2) It shall be unlawful for any person to transport any alcoholic liquor upon which the tax imposed by the state liquor control act has not been paid or on the containers of which each mark and stamp required by the state liquor control act has not been affixed, provided that nothing contained in this subsection shall make unlawful the possession and transportation of wine imported solely for use by any church or religious organization for sacramental purposes and uses. Any person who shall violate any of the provisions of this subsection shall, upon conviction thereof, be fined not exceeding \$500.00, or shall be imprisoned not exceeding six months, or both, in the discretion of the court; and in proper cases, the court may order and direct the confiscation of the liquor involved in such transaction as part of the judgment or conviction.

**Section 4.** Section 6-7 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-7. Revocation; penalties.**

- (a) Unless specific provisions for the suspension or revocation as to a particular license are provided elsewhere in this chapter, the city commission upon five days' notice to the person holding a license or permit under this chapter may revoke such license for any one of the following reasons:
  - (1) If a licensee or permit holder has fraudulently obtained the license by giving false information in the application therefor.
  - (2) If the licensee or permit holder has violated any of the provisions of this chapter or any other rules or regulations of the city relating to alcoholic liquor or enhanced cereal malt beverages, or if the licensee or permit holder has violated any law of the state, for which violation the city is authorized by law to revoke the license.
  - (3) If the licensee or permit holder has become ineligible to obtain a license or permit under this chapter.
  - (4) Drunkenness of a person holding such license or permit, drunkenness of a licensee's or permittee's manager or employee while on duty and while on the premises for which the license or permit is issued, or for a licensee or permittee, his manager or employee permitting any intoxicated person to remain in such place selling alcoholic liquor.
  - (5) The nonpayment of any license or permit fees or occupation tax.Additionally, the police chief or his designee may immediately cancel a temporary permit or a special event CMB permit if the event becomes unruly or if the permit holder has violated any of the provisions of this chapter.
- (b) Unless specific provisions for the suspension or revocation as to a particular license are provided elsewhere in this chapter, the licensee, within 20 days after the order of the city commission revoking any license or permit pursuant to this chapter, may appeal to the district court of the county and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken under this section shall not suspend the order of revocation of the license or permit of any licensee or permittee, nor shall any new license or permit be issued to such person or any person acting for or on his behalf, for a period of six months thereafter.
- (c) In addition to the provisions of subsection (a) of this section, and except where other penalties are provided, if the licensee or permit holder has violated any of the provisions of this chapter, the individual holding the license or permit may be charged in municipal court with a violation of the alcoholic liquor laws of the city and, upon conviction, shall be punished by:

- (1) A fine of not more than \$499.00;
- (2) Imprisonment in jail for not more than 179 days; or
- (3) Both such fine and imprisonment.

**Section 5.** Section 6-34 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-34. Application.**

- (a) Any person desiring a license shall make an application to the city commission 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, and shall contain:
  - (1) The name and residence of the applicant;
  - (2) The particular place for which a license is desired;
  - (3) The name of the owner of the premises upon which the place of business is located;
  - (4) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired;
  - (5) A statement that the applicant is a citizen of the United States and not less than 21 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, 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.
- (b) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he has inspected the premises to be licensed and that the same comply with the provisions of chapter 22 of this Code.
- (c) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he has inspected the premises to be licensed and that the same comply with the provisions of chapter 20 of this Code.
- (d) 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 is qualified as a licensee under the provisions of this article. 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 city commission at the earliest meeting consistent with current notification requirements.

**Section 6.** Section 6-36 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-36. License fees; term.**

- (a) The license fees for selling enhanced cereal malt beverages shall be as provided in the city fee schedule. Such fee shall be in addition to such fees as are to be remitted to the division of alcohol beverage control pursuant to K.S.A. 41-2702, as amended. License fees are nonrefundable and non-transferable.

- (b) The full amount of the license fee shall be required regardless of the time of 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.

**Section 7.** Section 6-37 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-37. Examination; approval; disqualification.**

If the application made under this article is in proper form and accompanied by the license fee, the city commission shall examine the application, and if the applicant is qualified as provided by law the city commission shall approve the granting of a license to the applicant, provided that no license shall be issued to:

- (1) A person who is not a citizen of the United States.
- (2) A person who is not of good character and reputation in the community in which he resides.
- (3) 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.
- (4) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.
- (5) A corporation or a limited liability company if any member, manager, officer or director thereof, or any stockholder or member owning in the aggregate more than 25 percent of the stock or the ownership interests of such corporation or limited liability company would be ineligible to receive a license hereunder for any reason.
- (7) A corporation or a limited liability company, if any member, manager, officer or director thereof, or any stockholder or member owning in the aggregate more than 25 percent of the stock or the ownership interests of such corporation or limited liability company, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock or the ownership interests of a corporation or limited liability company 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.
- (8) 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.
- (9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship or age, except that this subsection shall not apply in determining eligibility for a renewal license.

**Section 8.** Section 6-44 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:



**Sec. 6-44. Minors on premises; loitering by underage persons.**

- (a) No license under this article shall permit a person under the legal age for consumption of enhanced cereal malt beverages in or about a place of business, and no licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage to possess an enhanced cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than 18 years of age may dispense or sell enhanced cereal malt beverage if:
  - (1) The licensee's place of business is licensed only to sell enhanced cereal malt beverage at retail in original and unopened containers and not for consumption on the premises; or
  - (2) The licensee's place of business is a licensed food establishment, and not less than 50 percent 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.
- (b) No person under the legal age for consumption of enhanced cereal malt beverages shall loaf or loiter or consume any enhanced cereal malt beverage in any place of business in the city for which an enhanced cereal malt beverage license for consumption on the premises has been issued.

**Section 9.** Section 6-45 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-45. Days and hours of operation.**

- (a) Except as provided by subsection (b) of this section, no enhanced cereal malt beverages may be sold or dispensed:
  - (1) Except as to Sundays, between the hours of 12:00 midnight and 6:00 a.m.;
  - (2) On Easter Sunday;
  - (3) In the original package before 9:00 a.m. or after 8:00 p.m. on all other Sundays; or
  - (4) For consumption on the licensed premises on Sunday, except in a place of business which is licensed to sell enhanced 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.
- (b) Notwithstanding the foregoing, enhanced cereal malt beverages may be sold on premises which are licensed pursuant to both the Kansas cereal malt beverage act (K.S.A. 41-2701 et seq.) and the Kansas club and drinking establishment act (K.S.A. 41-2601 et seq.) at any time alcoholic liquor is allowed by law to be served on such premises.

**Section 10.** A new Section 6-49 is hereby established in the Leavenworth Code of Ordinances, to read as follows:

**Sec. 6-49. License Suspension/Revocation by City Commission.**

- (a) The governing body of the city, upon five (5) days' notice to the persons holding a license to sell enhanced cereal malt beverages, may revoke or suspend the license for any one of the following reasons:
  - (1) The licensee has violated any of the provisions of this chapter, or any provisions of K.S.A. 41-2701 *et seq.*, as amended;
  - (2) Drunkenness of the licensee or permitting any intoxicated person to remain upon the licensee's place of business;

- (3) The sale of cereal malt beverages or enhanced cereal malt beverages to any person under the legal age for consumption of cereal malt beverages or enhanced cereal malt beverages;
  - (4) Permitting any person to mix drinks with materials purchased in or upon the place of business or brought in for that purpose;
  - (5) For the sale or possession of, or for permitting any person to use or consume on the licensed premises, any alcoholic liquor, except enhanced cereal malt beverages; or
  - (6) The licensee has been convicted of a violation of the Kansas beer and cereal malt beverage keg registration act, as amended.
- (b) The provisions of subsections (a)(4) and (a)(5) shall not apply if such place of business or premises also are currently licensed as a club or drinking establishment pursuant to the Kansas club and drinking establishment act, as amended.
- (c) The governing body of the city, upon five (5) days' notice to the persons holding a license to sell enhanced cereal malt beverages, shall revoke or suspend the license for any one of the following reasons:
- (1) If a licensee has fraudulently obtained the license by giving false information in the application therefor;
  - (2) If the licensee has become ineligible to obtain a license under this article;
  - (3) The nonpayment of any license fees;
  - (4) For permitting any gambling in or upon any premises licensed under this article;
  - (5) For the employment of any person under the age established by the State of Kansas for employment involving dispensing enhanced cereal malt beverages;
  - (6) For 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 years, adjudged guilty of a felony or any violation of the intoxicating liquor laws of this state, or another state, or the United States; or
  - (7) There has been a violation of K.S.A. 21-6204 (maintaining or permitting a public nuisance), as amended.
- (d) Within 20 days after the order of the board revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal.

**Section 11.** Section 6-93 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-93. Occupational taxes.**

There is hereby levied an occupation tax, as provided in the city fee schedule, on any person holding a license issued by the state director of alcoholic beverage control for the following:

- (1) The retail sale within the city of alcoholic liquors for consumption off the premises;
- (2) All alcoholic liquor and/or cereal malt beverage distributors, for the first and each additional distributing place of business operated in the city by the same licensee;
- (3) All microbreweries and microdistilleries;
- (4) All farm wineries;
- (5) All persons engaged in a nonbeverage users' business.

Such tax shall be paid by the licensee to the city clerk before business is begun under an original state license and shall be paid within five days after any renewal of a state license. A holder of any of the above-described licensees shall present such state license when applying to pay the occupation taxes levied herein, and the taxes shall be received and receipt issued for the period covered by the state license by the city license collector. The occupation tax is nonrefundable and non-transferable.

**Section 12.** Section 6-98 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-98. Days and hours of operation.**

- (a) No person shall sell at retail, alcoholic liquor in the original package:
  - (1) On Easter Sunday, Thanksgiving Day or Christmas Day;
  - (2) On all other Sundays, before 9:00 a.m. or after 8:00 p.m.; or
  - (3) Before 9:00 a.m. or after 11:00 p.m. on any day when the sale is permitted.
- (b) Enhanced cereal malt beverages may be sold on premises licensed for the retail sale of enhanced cereal malt beverages for consumption off the premises at any time when alcoholic liquor is allowed by law to be served on the premises.

**Section 13.** Section 6-220 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

**Sec. 6-220. Business regulations.**

- (a) No drinking establishment licensed under this article shall allow the serving, mixing or consumption of alcoholic liquor or enhanced cereal malt beverages on its premises between the hours of 2:00 a.m. and 6:00 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.
- (c) No alcoholic beverages or enhanced cereal malt beverages shall be given, sold or traded to any person under 21 years of age.
- (d) A club or drinking establishment licensee shall allow the licensee to allow legal patrons of the club or drinking establishment to remove alcoholic liquor or enhanced cereal malt beverages from the licensed premises in one or more containers, including in the original unopened container, subject to the following conditions:
  - (1) It must be otherwise legal for the licensee to sell the alcoholic liquor or enhanced cereal malt beverage;
  - (2) Each container of alcoholic liquor or enhanced cereal malt beverage must have been purchased by a patron of the licensed premises;
  - (3) The licensee or the licensee's employee must provide the patron with a dated receipt for the alcoholic liquor or enhanced cereal malt beverage;
  - (4) Before any container of alcoholic liquor or enhanced cereal malt beverage is removed from the licensed premises, the licensee or the licensee's employee must securely reseal any opened containers, and place the container in a tamper-proof, transparent bag that is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened;

- (5) No original unopened containers of spirits may be removed from the licensed premises; and
- (6) No alcoholic liquor or enhanced cereal malt beverage may be removed from the licensed premises after 11:00 p.m. unless such alcoholic liquor is wine that was purchased and partially consumed on the licensed premises.

Nothing in this subsection (d) shall be construed as modifying or exempting any person from the provisions of the Standard Traffic Ordinance, as adopted by the City, regarding the transportation of alcoholic beverages.

**Section 14.** A new Section 6-221 is hereby established in the Leavenworth Code of Ordinances, to read as follows:

**Sec. 6-221. Revocation or suspension of license.**

The governing body, upon five (5) days' notice to the persons holding a license, may revoke or suspend any license pursuant to this article for any one or more of the following reasons:

- (a) The licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon.
- (b) The licensee has violated any of the provisions of this article or any rules or regulations adopted hereunder.
- (c) The licensee has become ineligible to obtain a license or permit under this article.
- (d) The licensee's manager or employee has been intoxicated while on duty.
- (e) The licensee, or its manager or employee, has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee.
- (f) There has been a violation of provisions of laws of this city, this state, or of the United States, pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge, on premises where alcoholic liquor is sold by such licensee.
- (g) The licensee, or its managing officers or any employee has purchased and displayed, on premises where alcoholic liquor is sold by such license, a federal wagering occupational stamp issued by the United States Treasury Department.
- (h) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coil operated gambling device stamp for the premises issued by the United States Treasury Department.
- (i) The licensee holds a license as a Class B club, drinking establishment or caterer and has been found guilty of a violation of K.S.A., Article 10 of Chapter 44, under a decision or order of the Kansas Human Rights Commission which has become final.
- (j) There has been a violation of K.S.A. 21-6204 (maintaining or permitting a public nuisance), as amended.

**Section 15.** Subject to the provisions of Section 17 below, Sections 6-1, 6-2, 6-5, 6-7, 6-34, 6-36, 6-37, 6-44, 6-45, 6-93, 6-98, and 6-220 of the Leavenworth Code of Ordinances, in existence as of and prior to the adoption of this ordinance, are hereby repealed. The Leavenworth Code of Ordinances shall further be amended to reflect that, with the enacting of new Section 6-49, Sections 6-50 through 6-69 are reserved, and

**Section 16.** This ordinance shall take effect and be in force from and after its publication in the official city newspaper. Provided, that as to Section 9 and Section 12 of this ordinance

(amending Code Sections 6-45 and 6-98, respectively), and pursuant to K.S.A. 41-2911(b) (as amended by 2021 House Bill No. 2137), this ordinance shall be published at least once each week for two consecutive weeks in the official city newspaper, and such Section 9 and Section 12 shall not become effective earlier than sixty (60) days following the date of its publication. If, within sixty (60) days following publication of this ordinance, a petition requesting that a proposition be submitted for approval by the voters is filed in accordance with K.S.A. 41-2911(b)(2), Section 9 and Section 12 of this ordinance shall not become effective until a proposition is submitted to and approved at an election as provided in K.S.A. 41-2911(b). The Sections of this ordinance shall be severable such that other sections of this ordinance not subject to such petition process shall take effect as provided above.

**PASSED and APPROVED** by the Governing Body on the 10th day of August, 2021.

/s/ Nancy D. Bauder

Nancy D. Bauder, Mayor

{Seal}

ATTEST:

/s/ Carla K. Williamson

Carla K. Williamson, CMC, City Clerk