

**ORDINANCE NO. 393**

**AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF BURDEN, KANSAS, BY REPEALING ARTICLE 2, AND ADOPTING A NEW ARTICLE 2, AND AMENDING ALL OTHER ARTICLES OF CHAPTER III, OF THE BURDEN CITY CODE.**

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

**Section 1:** New **DEFINITIONS** in 3-101 Definitions shall be adopted by striking the following definitions and adding new definitions as follows:

Strike Alcoholic Liquor definition and add:

(b) Alcoholic liquor means alcohol, spirits, wine, beer and every liquor 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 beer or enhanced cereal malt beverage containing not more than 6 percent alcohol by weight.

Strike Cereal Malt Beverages definition and add:

(d) 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.

Strike General Retailer definition and add:

(i) General Retailer means a person who has a license to sell enhanced cereal malt beverages at retail.

Strike Limited Retailer definition and add:

(j) 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.

Strike Place of Business definition and add:

(k) Place of Business means any place at which enhanced cereal malt beverages or alcoholic beverages or both are sold.

Strike Wholesaler or distributor definition and add:

(m) Wholesaler or Distributor means persons who sell or offer for sale any beverage referred to in this Chapter to persons authorized by this Chapter to sell enhanced cereal malt beverages at retail.

**Section 2:** All Articles of Chapter III are hereby amended and shall be modified to strike the language “cereal malt beverage” and replace with “enhanced cereal malt beverage”.

**Section 3:** All Sections of Article 2, Chapter III of the Code of the City of Burden,

Kansas are hereby repealed and a new Article 2, Chapter III of the Code of the City of Burden, Kansas shall read as follows:

**3-201. LICENSE ISSUED BY CITY.** The “Cereal Malt Beverage License” issued by the city of Burden pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in section 1, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

**3-202. LICENSE REQUIRED OF RETAILER.**

(a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be 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.

**3-203. 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 Kansas Department of Health and that the same comply with the provisions of Chapter 8 of this code.

(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 and that the same comply with the provisions of Chapter 7 of this code.

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 or she is qualified as a licensee under the provisions of this chapter. 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.

**3-204. LICENSE APPLICATION PROCEDURES.**

(a) All applications for a new and renewed enhanced cereal malt beverage license shall

be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.

(b) The city clerk's office shall notify the applicant of an existing license 30 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 they are received. The police department will run a record check on all applicants and the fire department and health department will inspect the premises in accord with Chapters 7 and 8 of this code. The departments will then recommend approval, or disapproval, of applications within five 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 and been reviewed by the above city departments.

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

### **3-205. 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 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.

**3-206. LICENSE TO BE POSTED.** Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

**3-207. 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 Cowley 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

and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

**3-216. 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 for each sex 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.

**3-217. MINORS ON PREMISES.**

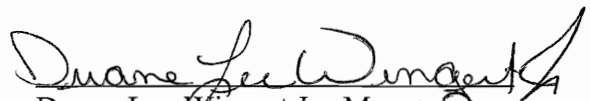
(a) It shall be unlawful for any person under 21 years of age to remain on any premises where the sale of enhanced cereal malt beverages is licensed for on-premises consumption.

(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 or her parent or guardian, or if the licensed establishment derives not more than 30 percent of its gross receipts in each calendar year from the sale of enhanced cereal malt beverages for on-premises consumption.

**Section 4.** This ordinance shall be published one time in the official city newspaper.

**Section 5.** This ordinance shall take effect and be in force from and after April 1, 2019.  
PASSED AND APPROVED by the Governing Body on this 25<sup>th</sup> day of March, 2019.

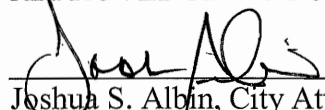
(SEAL)

  
Duane Lee Wingert Jr., Mayor

ATTEST

  
Julia Loving, City Clerk

APPROVED AS TO FORM

  
Joshua S. Albin, City Attorney