

RESOLUTION NO. 064-2019

Published on: _____

Effective April 1, 2019

**A RESOLUTION MODIFYING CHAPTER 4, ARTICLE II OF THE
SEDGWICK COUNTY CODE REGARDING RETAIL CEREAL MALT
BEVERAGE ESTABLISHMENTS.**

WHEREAS, Sedgwick County Resolution No. 5-1984 established the Sedgwick County retail cereal malt beverage establishments code provisions; and

WHEREAS, in 2017 the Kansas Legislature approved House Sub. For SB 13, which amended the Kansas Cereal Malt Beverage Act to where retailers licensed by counties pursuant to the Cereal Malt Beverage Act would be able sell beer containing not more than 6% alcohol by volume, beginning on April 1, 2019; and

WHEREAS, the Board of County Commissioners of Sedgwick County deems it appropriate to modify the Sedgwick County Code provisions to be in accordance with changes to Kansas law.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, AMENDS THE SEDGWICK COUNTY CODE AS FOLLOWS:

Section 1. Amendment to Section 4-26 of the Sedgwick County Code.

Sec. 4-26 of the Sedgwick County Code is amended to state as follows:

Sec. 4-26. - Definitions.

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

Association means an organization of people with a common purpose and having a formal structure.

Beer means a beverage obtained by alcoholic fermentation or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages.

Cereal malt beverage includes 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. 2018 Supp. 41-2729, and amendments thereto, but does not include any such liquor which contains more than three and two-tenths (3.2) percent alcohol by weight.

Employee means any person who is employed at a place of business which sells enhanced cereal malt beverages at retail.

Enhanced cereal malt beverage includes cereal malt beverage, as that term is defined within this section, and “enhanced cereal malt beverage” shall also 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 (K.S.A. 41-2701, *et seq.*).

Legal age for consumption of enhanced cereal malt beverage means twenty-one (21) years of age.

License means a license to sell enhanced cereal malt beverages at retail at a place of business in the unincorporated area of the county, issued by the board of county commissioners.

Licensed premises means the place of business licensed by the board of county commissioners for sale at retail of enhanced cereal malt beverages and such other areas under the control of the licensee or his employees which are in such close proximity to the premises licensed by the board of county commissioners that activities and conduct of persons within such other areas may be viewed by persons within the premises licensed by the board of county commissioners.

Licensee means a person to whom a license to sell enhanced cereal malt beverages at retail has been issued by the board of county commissioners.

Original container means any bottle, can, keg or other receptacle or container whatsoever used, corked or capped, sealed and labeled by the manufacturer of enhanced cereal malt beverages to contain and to convey an enhanced cereal malt beverage.

Other organization means any organization of two (2) or more people having a financial interest in the operation of the organization.

Patron means any person in or upon a place of business other than the owner, the licensee or any employee thereof.

Place of business means any place licensed by the board of county commissioners to sell enhanced cereal malt beverages, and includes the area described within the legal description on the application for license to sell enhanced cereal malt beverage form approved by the attorney general of the state.

Relevant evidence means any evidence having any tendency in reason to prove any material fact.

Sale at retail and *retail sale* mean sale for use or consumption and not for resale in any form.

Special event means a picnic, bazaar, fair, festival or similar gathering not exceeding four (4) days in duration and held at a location not regularly licensed for the retail sale of enhanced cereal malt beverages.

Special event license means a license to sell enhanced cereal malt beverages at retail at a place of business in the unincorporated area of the county, issued by the board of county commissioners. Such license shall temporarily permit the sale of enhanced cereal malt beverages at retail for consumption at the location of sale.

Stockholder means any stockholder owning, legally or equitably, more than twenty-five (25) percent of the stock of a corporation.

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

Section 2. Amendment to Section 4-29 of the Sedgwick County Code.

Sec. 4-29 of the Sedgwick County Code is amended to state as follows:

Sec. 4-29. - Access to premises.

Each place of business licensed by the board of county commissioners to sell enhanced cereal malt beverages at retail shall be open to the public and to law enforcement officers and county code enforcement officers at all times during business hours, except that a premises licensed as a club pursuant to the club and drinking establishment act [K.S.A. 41-2601 et seq.] shall be open to law enforcement officers and county code enforcement officers and not to the public.

Section 3. Amendment to Section 4-31 of the Sedgwick County Code.

Sec. 4-31 of the Sedgwick County Code is amended to state as follows:

Sec. 4-31. - Hours of sale and consumption.

- (a) Except as provided in K.S.A. 41-2704, as amended, no enhanced cereal malt beverages may be sold:
 - (1) Between the hours of 12:00 midnight and 6:00 a.m.;
 - (2) On Sunday, except in a place of business or special event which is licensed to sell enhanced cereal malt beverages for consumption on the premises and which derives not less than thirty (30) percent of its gross receipts from the sale of food for consumption on the licensed premises.
- (b) A place of business shall not be opened or in use between the hours of 1:00 a.m. and 6:00 a.m. unless that place of business is primarily engaged in the sale of food products. For purposes of this subsection, the phrase "primarily engaged in the sale of food products" shall mean an establishment in which not less than fifty (50) percent of the gross receipts in each calendar year are from the sale of food for consumption, and the word "food" shall mean any raw, cooked or processed edible substance or ingredient, other than enhanced cereal malt beverages. The burden of providing a place of business is primarily engaged in the sale of food products is upon the place of business.
- (c) No person may give away or redeem certificates for enhanced cereal malt beverages in a place of business except during the hours in which enhanced cereal malt beverages may be sold lawfully.

- (d) Electric signs advertising enhanced cereal malt beverages shall not be in operation:
 - (1) Between the hours of 12:00 midnight and 6:00 a.m.;
 - (2) On Sunday, except in a place of business or special event which is licensed to sell enhanced cereal malt beverages for consumption on the premises and which derives not less than thirty (30) percent of its gross receipts from the sale of food for consumption on the licenses premises.
- (e) Notwithstanding any other provision in this section, enhanced cereal malt beverages may be sold and consumed on premises which are licensed both as a place of business pursuant to this article and as a class A or B club at any time when alcoholic liquor is allowed by law to be served on the premises.

Section 4. Amendment to Section 4-32 of the Sedgwick County Code.

Sec. 4-32 of the Sedgwick County Code is amended to state as follows:

Sec. 4-32. - Purchase or consumption by underage persons.

No licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage to consume or purchase any enhanced cereal malt beverage 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 enhanced cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than eighteen (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 service establishment, as defined by K.S.A. 36-501, and not less than fifty (50) percent of the gross receipts from the licensee's place of business are derived from the sale of food for consumption on the premises of the licensed place of business.

Section 5. Amendment to Section 4-34 of the Sedgwick County Code.

Sec. 4-34 of the Sedgwick County Code is amended to state as follows:

Sec. 4-34. - Health and sanitary requirements.

The licensee shall at all times comply with all of the health and sanitary requirements and rules and regulations prescribed by the division of health in the operation of the licensee's place of business.

Section 6. Amendment to Section 4-46 of the Sedgwick County Code.

Sec. 4-46 of the Sedgwick County Code is amended to state as follows:

Sec. 4-46. - Application; investigation of applicant.

- (a) Any person desiring to secure a license shall make application to the board of county commissioners. The application shall be filed in quadruplicate with and dated by the county clerk. A copy of the application shall be distributed promptly by the county clerk to the sheriff's department, to the county counselor, and by registered mail to the clerk of the township board where the applicant's place of business will be located. The application shall be verified and upon a form prepared by the attorney general of the state.
- (b) No license shall be issued unless the sheriff's office has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the county clerk not later than twenty (20) days after the date of the application. This time period may be extended for ten (10) days by the chairman of the board of county commissioners if the sheriff's department requests such an extension in writing. The county clerk shall maintain the report of the sheriff's department as a confidential record and shall not disclose it to any person except members and legal staff of the board of county commissioners, the district attorney, the applicant and such other persons as the chairman of the board of county commissioners may designate in writing.
- (c) The township board may, within ten (10) days after the date of the application, file advisory recommendations with the county clerk concerning the granting of the application. The advisory recommendations shall be considered by the board of county commissioners.
- (d) The original application shall not be granted unless: 1) the applicant is fingerprinted by the sheriff's department; and 2) the applicant submits with the application two (2) photographs of the applicant taken within thirty (30) days prior to the date of application and which are not smaller than two (2) inches by two (2) inches. Upon subsequent application for license renewal, that applicant need not submit additional fingerprints; however, the applicant's original fingerprints shall remain on file with the county clerk. Two (2) photographs of the applicant shall be submitted with each application for license renewal. Said photographs shall have been taken within thirty (30) days prior to the date of renewal application and shall not be smaller than two (2) inches by two (2) inches. The filing of an application for a license shall constitute a waiver of any constitutional or statutory right to privacy of the criminal history record of an individual applicant, of the managers, officers, directors and stockholders of a corporate applicant, of the partners of a partnership applicant, and of the members of an association applicant or other organization applicant.
- (e) The application shall not be granted unless a diagram accompanies the application showing the internal and external configuration of the licensed premises, including all doors, windows, entrances, exits, the fixed structural internal features of the licensed premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall

not be required; provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six (6) inches and sufficient to show clearly the various interior dimensions of all areas of the licensed premises. The requirements of this paragraph shall not apply to renewal applications if the applicant adopts a diagram that was previously submitted for the license sought to be renewed and if the licensee certifies that the licensed premises has not been altered since the immediately preceding issuance of the license and that the previous diagram continues to accurately depict the exterior and interior layouts of the licensed premises. The approval or use of the diagram required pursuant to this paragraph shall not be deemed to be, and shall not be interpreted or construed to constitute, any county approval required pursuant to this or any other applicable county resolution and regulation, but is merely intended to define and limit the portion of a building, premises or structure intended for use as a place of business.

- (f) Pursuant to K.S.A. 41-2702(e), each application or renewal must obtain a state stamp affixed to the license by the director of alcoholic beverage control of the Kansas Department of Revenue.
- (g) In order to be granted a license, all applicants must meet the requirements for licensure established within K.S.A. 41-2701, et seq., including but not limited to those requirements within K.S.A. 41-2703 and K.S.A. 41-2703a.

Section 7. Amendment to Section 4-48 of the Sedgwick County Code.

Sec. 4-48 of the Sedgwick County Code is amended to state as follows:

Sec. 4-48. - Fees.

- (a) The application for a license shall be accompanied by a license fee.
- (b) The license fee for each place of business licensed to sell enhanced cereal malt beverages at retail exclusively in original and unopened containers and not for consumption on the premises shall be fifty dollars (\$50.00) per year.
- (c) The license fee for all other places of business shall be two hundred dollars (\$200.00) per year.
- (d) If an application for a license is denied, one-half of the license fee shall be returned to the applicant.
- (e) The county clerk may provide the prospective licensee with a receipt for the license fee, but that receipt may not be used as a license.
- (f) In addition to the license fees charged by Sedgwick County, pursuant to K.S.A. 41-2702, each applicant for a license or renewal of such license is required to submit a twenty-five dollar (\$25.00) fee to the director of alcoholic beverage control of the Kansas Department of Revenue. When an application is submitted to the county clerk, the prospective licensee must also pay the county clerk such \$25.00 fee, which the county clerk will forward to the

director of alcoholic beverage control of the Kansas Department of Revenue for purposes of the stamp referred to within Sec. 4-46(f) of this article.

Section 8. Amendment to Section 4-49 of the Sedgwick County Code.

Sec. 4-49 of the Sedgwick County Code is amended to state as follows:

Sec. 4-49. - Renewal.

- (a) All licenses expire on December 31 of the year of issuance and must be renewed before enhanced cereal malt beverages may be sold at the place of business in the following year. Any licensee desiring to renew a license should make application to the board of county commissioners not later than November 1. The application for renewal shall be obtained from and filed in quadruplicate with and dated by the county clerk. The application for renewal shall be verified and upon a form prepared by the attorney general of the state. The application shall be accompanied by the license fees prescribed by section 4-48 and by proof that the licensee has paid all personal property taxes for the preceding tax year arising from the operation of the place of business. The application for renewal shall be processed in accordance with sections 4-46 and 4-47.
- (b) No license shall be renewed if the licensee has become ineligible to receive a license under this article.
- (c) If the application for renewal is granted, the county clerk shall deliver the license to the licensee. If the application for renewal is denied, the county clerk shall notify the licensee within five (5) days after the decision of the board of county commissioners.

Section 9. Amendment to Section 4-52 of the Sedgwick County Code.

Sec. 4-52 of the Sedgwick County Code is amended to state as follows:

Sec. 4-52. - Revocation and suspension generally.

- (a) The board of county commissioners shall revoke or suspend a license for any one of the grounds delineated in K.S.A. 41-2708(c). Selling or providing enhanced cereal malt beverage to any person who is intoxicated shall be grounds for suspension or revocation of the license. The board of county commissioners may revoke or suspend a license for any of the grounds delineated in K.S.A. 41-2708(a).
- (b) A petition to revoke or suspend a license may be made to the board of county commissioners by the county counselor. The petition shall contain a short and plain statement of facts constituting grounds for revocation or suspension. The petition shall be filed with the chairman of the board of county commissioners.
- (c) A copy of the petition shall be served by the board of county commissioners on the licensee within two (2) days after it is filed with the chairman of the board of county

commissioners. Service shall be by mailing a copy of the petition by registered mail to the licensee at the place of business address shown on the application for a license. Service by mail is complete upon mailing.

- (d) If the licensee desires a hearing on the petition, the licensee shall request a hearing. The request must be in writing and must be delivered to the chairman of the board of county commissioners within five (5) days after service of the petition on the licensee. If delivery is made by mail, three (3) days shall be added to the period in which delivery must be completed. If the licensee fails to request a hearing in a timely manner, the facts alleged in the petition shall be deemed admitted and the board of county commissioners shall promptly act on the petition. If the licensee delivers a timely request for a hearing, the chairman of the board of county commissioners shall schedule a hearing on the petition and shall give the licensee at least five (5) days' notice by registered mail of the date, time and place of the hearing.
- (e) The licensee must appear in person at the hearing on the petition and may have the assistance of counsel. If the licensee fails to appear at the hearing, the facts alleged in the petition shall be deemed admitted and the board of county commissioners shall promptly act on the petition. The board of county commissioners may continue the date of the hearing for good cause upon the request of the petitioner or the licensee.
- (f) Pursuant to the provisions of Kansas law, the board of county commissioners may cause any subpoena to be issued to secure the appearance of any witnesses for the hearing described within this section.
- (g) Upon a hearing, the petitioner shall have the burden of presenting evidence to establish grounds for revoking or suspending a license. The petitioner shall have the burden of proving the facts constituting the grounds for revocation or suspension by a preponderance of the evidence; that is, before a license can be revoked or suspended, the facts constituting the grounds for revocation or suspension must appear to the board of county commissioners from all the evidence to be more likely true than not true. The board of county commissioners may consider all relevant evidence, including affidavits and hearsay. Affidavits and testimony shall be by oath or affirmation administered by the persons and in the manner provided in K.S.A. ch. 54, art. 1 [54-101 et seq.]. The licensee may cross examine witnesses called by the petitioner and may present evidence of his own.
- (h) If the board grants the petition after a hearing, the revocation or suspension shall be effective immediately. A written order of revocation or suspension shall be sent by registered mail to the licensee at the place of business address shown on the application for a license. If the board of county commissioners grants the petition upon facts deemed admitted by the licensee's failure to request a hearing or to appear at a requested hearing, the revocation or suspension shall be effective upon mailing by registered mail a copy of a written order of revocation or suspension sent to the licensee at the place of business shown on the application for a license.
- (i) Within twenty (20) days after the order of the board of county commissioners revoking or suspending a license, the licensee may appeal to the district court of the county in the manner provided by law, provided that any appeal taken from an order revoking or

suspending a license shall not suspend the order of revocation or suspension during the pendency of any such appeal.

- (j) In the case of a revocation of the license of any licensee, no new license for that place of business shall be issued to that licensee or any person acting for or on his behalf for a period of six (6) months.

Section 10. Amendment to Section 4-53 of the Sedgwick County Code.

Sec. 4-53 of the Sedgwick County Code is amended to state as follows:

Sec. 4-53. - Temporary suspension by sheriff.

The sheriff of the county, upon five (5) days' written notice to the licensee, shall have the authority to suspend such person's license for a period not to exceed thirty (30) days for any violation of the provisions of this article or state laws pertaining to enhanced cereal malt beverages, which violation does not in the sheriff's judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the board of county commissioners in writing within five (5) days from the date of receipt of such order, and such order shall be stayed pending hearing before the board of county commissioners. If such order of suspension is upheld by the board of county commissioners, the licensee may appeal to the district court in the manner provided by section 4-52.

Section 11. Amendment to Section 4-54 of the Sedgwick County Code.

Sec. 4-54 of the Sedgwick County Code is amended to state as follows:

Sec. 4-54. - Special event license—Application and requirements.

An application for a special event license shall be made upon the same form as is used to apply for an annual license for retail sale of enhanced cereal malt beverages. The procedures for processing shall be the same as those provided within article II of this chapter for annual enhanced cereal malt beverage licensing; however, the following additional requirements shall also apply: The county clerk or the clerk's designee shall clearly note, or ensure that the applicant clearly notes, upon the face of the application:

- (1) The words "SPECIAL EVENT APPLICATION";
- (2) The exact term of days for which the license is being requested, as well as the hours;
- (3) The location of the special event including specific boundaries limiting such location;
- (4) The number of people expected to attend the special event;
- (5) The purpose of the special event.

All state and local laws, and state and local regulatory requirements applicable to the acquisition of, and use of a license to sell enhanced cereal malt beverages at retail are applicable to the

acquisition and use of a special event license; however, fingerprinting and photographs for a special event need only be submitted once per calendar year.

Section 12. Amendment to Section 4-55 of the Sedgwick County Code.

Sec. 4-55 of the Sedgwick County Code is amended to state as follows:

Sec. 4-55. - Same—Limitation on number; transferability.

A special event license shall not be issued to the same person or person's spouse, or organization more than four (4) times in a calendar year. A special event license shall not be transferable or assignable.

Section 13. Addition of Section 4-57 to the Sedgwick County Code.

Sec. 4-57 of the Sedgwick County Code is added to state as follows:

Sec. 4-57. – Existing licenses.

Beginning on April 1, 2019, any 2019 license that has been approved or renewed by the board of county commissioners shall permit such licensed premises to sell enhanced cereal malt beverage with the existing 2019 license.

Sec. 14. Addition of Section 4-58 to the Sedgwick County Code.

Sec. 4-58 of the Sedgwick County Code is added to state as follows:

Sec. 4-58. – State regulation.

Nothing contained within this article is intended to preempt, modify, or infringe upon the ability for the State of Kansas and its various agencies, including but not limited to the Kansas department of revenue's director for the alcoholic beverage control division, to issue citations, revoke licenses, enforce regulations, or take any other action as permitted by Kansas law as it pertains to beer or any other alcohol. Instead, the scope of this article is limited to the legislative authority that the county has pursuant to K.S.A. 41-2701, et seq.

Section 15. Severability Clause.

Should any section, clause or provision of this resolution be declared by any court of competent jurisdiction to be invalid, the same shall not affect the validity of this resolution as a whole, or any part thereof, other than the part so declared to be invalid.

Section 16. Publication and effective date.

The County Clerk is directed to publish this resolution once in the official county newspaper. This resolution shall become effective on April 1, 2019.

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Commissioners present and voting were:

PETER F. MEITZNER
MICHAEL B. O'DONNELL, II
DAVID T. DENNIS
LACEY D. CRUSE
JAMES M. HOWELL

Aye
Aye
Aye
Aye

Dated this 20 day of March, 2019.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

Kelly B. Arnold
for KELLY B. ARNOLD, County Clerk



David T. Dennis

DAVID T. DENNIS, Chairman
Commissioner, Third District

Peter F. Meitzner

PETER F. MEITZNER, Chair Pro Tem
Commissioner, First District

Michael B. O'Donnell, II

MICHAEL B. O'DONNELL, II
Commissioner, Second District

Lacey D. Cruse

LACEY D. CRUSE
Commissioner, Fourth District

James M. Howell

JAMES M. HOWELL
Commissioner, Fifth District

APPROVED AS TO FORM:

Justin M. Waggoner
JUSTIN M. WAGGONER
Assistant County Counselor