

(Summary Published in the Times-Sentinel
on the ____ day of _____, 2019.)

THE CITY OF CHENEY, KANSAS

ORDINANCE NO. 915

AN ORDINANCE REGULATING THE SALE AND CONSUMPTION OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF CHENEY, KANSAS BY AMENDING PORTIONS OF CHAPTER 3 OF THE CHENEY MUNICIPAL CODE AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES OF THE CITY OF CHENEY, KANSAS IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHENEY, KANSAS.

SECTION 1. AMENDMENT. Section 3-101 of the Cheney Municipal Code shall be amended to read as follows:

“Section 3-101. DEFINITIONS. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section.

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

(b) 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.

(c) 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.

(d) Cereal Malt Beverage - means enhanced cereal malt beverage and 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.

(e) Class A Club - means a premises which is 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 of Kansas, for

the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

(f) Class B Club - means a 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.

(g) Club - means a Class A or Class B club.

(h) Drinking Establishment - means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

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

(j) Limited Retailer - means a person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

(k) Place of Business. - Any place at which cereal malt beverages or alcoholic beverages or both are sold.

(l) Temporary Permit - means a permit, issued in accordance with the laws of the State of Kansas, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public.

(m) Wholesaler or distributor. - Any individuals, firms, co-partnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, co-partnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.”

SECTION 2. AMENDMENT. Article 2 of Chapter 3 of the Cheney Municipal Code shall be amended to read as follows:

"ARTICLE 2. ENHANCED CEREAL MALT BEVERAGES

Section 3-201 – Definition.

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.

Section 3-202 – License Issued By City

The “Cereal Malt Beverage License” issued by the City of Cheney, Kansas pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in Section 3-201 of this Code, by those retailers in compliance with this ordinance and other laws and regulations that may apply. Such a Cereal Malt Beverage License is only good for the calendar year in which it is issued. A separate application must be made to the City for the renewal of a previously issued license.

Section 3-203 – License Required of Retailer

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

for each special event where enhanced cereal malt beverages or 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 or 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 or cereal malt beverage in any other manner.

(c) A special event retailers' permit shall allow the permit holder to offer for sale, sell and serve enhanced cereal malt beverage or cereal malt beverage for consumption on otherwise unpermitted premises, which may be open to the public. The special event retailer's permitting process shall follow the enhanced cereal malt beverage licensing process and procedures provided in this Article with the following additions:

(1) A special event retailers' permit shall specify the premises for which the permit is issued;

(2) A special event retailers' permit shall be issued for the duration of the special event, the dates and hours of which shall be specified in the permit;

(3) No more than four special event retailers' permits may be issued to any one applicant in a calendar year; and

(4) A special event retailers' permit shall not be transferable or assignable.

Section 3-204 – Application

Any person desiring a license shall annually 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.

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. The Chief of Police shall investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this Article and relevant Kansas statutes. The Chief shall report his findings to the City Administrator not later than ten (10) 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 3-205 – License Application Procedures

(a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk twenty (20) 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 thirty (30) days in advance of its expiration.

(c) The Clerk's office shall provide copies of all applications to the Police Department, the Fire Department, and to the Sedgwick County Health Department, when they are received. These Departments have the option to recommend the approval, or disapproval, of applications within ten (10) working days of the Departments' receipt of the application.

(d) The governing body will not consider any application for a new or renewed license that has not been submitted twenty (20) days in advance and been submitted to the Departments mentioned above.

(e) An applicant who has not previously maintained an enhanced cereal malt beverage license in the City shall attend the governing body meeting at which the applicant's application for a new license is to be considered.

Section 3-206 – License Granted; Denied

(a) The minutes of the City Council meeting where an application for a license is considered shall show the action taken by the governing body on the application.

(b) If a license is granted, the City Clerk shall issue the license which shall show the name of the licensee and the year for which it is issued.

(c) No license that is issued may be transferred to another licensee.

(d) If a license application is denied, the license fee shall be immediately returned to the person who made the license application.

Section 3-207 – 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 3-208 – 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 Sedgwick 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 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.

(i) 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 3-209 – License Required of Retailer

(a) No license shall be issued for the sale at retail of any enhanced cereal malt beverage on premises which are located in areas not zoned for such purpose.

(b) It shall be unlawful to sell or dispense at retail any enhanced cereal malt beverage at any place within the city limits that is within a two hundred (200) feet radius of any church, school or library.

(c) Provisions shall not apply to any establishment holding a private club license issued by the State of Kansas.

(d) The distance limitation of subsection (b) above shall not apply to any establishment holding an enhanced 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 3-210 – License Fee

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

(a) General Retailer -- for each place of business selling enhanced cereal malt beverages at retail, license fees shall be set per calendar year by a fee resolution adopted by the governing body of the City of Cheney, Kansas.

(b) Limited Retailer -- for each place of business selling only at retail enhanced cereal malt beverages in original and unopened containers and not for consumption on the premises, license fees shall be set per calendar year by a fee resolution adopted by the governing body of the City of Cheney, Kansas.

Full amount of the license fee shall be required regardless of the time of the 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 3-211 – Suspension of License

The Chief of Police, upon five (5) days' written notice, shall have the authority to suspend any license issued under this Article for a period not to exceed thirty (30) days, for any violation of the provisions of this Article or other laws pertaining to enhanced cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven (7) days from the date of such order and the governing body may choose to revoke such suspension, after providing notice of a public hearing concerning such revocation to the licensee, and an opportunity for the licensee to comment concerning the same during such public hearing.

Section 3-212 – License Suspension/Revocation by the Governing Body

The governing body of the City, after providing five (5) days notice to a licensee of a public hearing concerning a proposed suspension/revocation of the licensee's license to sell enhanced cereal malt beverages, and an opportunity for the licensee to comment concerning the same during such public hearing, may permanently revoke or cause to be

suspended for a period of not more than thirty (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 section or has become ineligible to obtain a license under this section;

(c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling enhanced cereal malt beverages;

(d) The sale of enhanced cereal malt beverages to any 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 enhanced cereal malt beverages;

(h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;

(i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed;

(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 private club.

Section 3-213 – Same; Appeal

The licensee, within twenty (20) days after the order of the governing body revoking any license, may appeal to the District Court of Sedgwick County, Kansas 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 unless so ordered by the District Court or an appellate court of competent jurisdiction, and no new license shall be issued to such person or any person acting for or on his or her behalf, for a period of six (6) months thereafter unless so ordered by the District Court or an appellate court of competent jurisdiction.

Section 3-214 – 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 twenty-five dollars (\$25). 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 year for which a current license is held by the licensee.

Section 3-215 – 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 enhanced cereal malt beverages within the City, to persons authorized to sell the same within this City unless such wholesaler and/or distributor has first secured a license from the Director of Revenue, State Commission of Revenue and Taxation of the State of Kansas authorizing such sales.

Section 3-216 – 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 enhanced cereal malt beverages may (1) be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m.; (2) be sold 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 enhanced cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614 and amendments thereto.

(d) Enhanced cereal malt beverages 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 by the State Director of Alcoholic Beverage Control.

(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 Director of Alcoholic Beverage Control 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 enhanced cereal malt beverage 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 in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

Section 3-217 – Prohibited Conduct on Premises

The following conduct by an enhanced cereal malt beverage licensee, manager or employee of any licensed enhanced cereal malt beverage establishment 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 males/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.

(g) The term premises means the premises licensed by the city as an enhanced cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

Section 3-218 – 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 a public health officer or designee."

SECTION 3. AMENDMENT. Section 3-302 of the Cheney Municipal Code shall be amended to read as follows:

“Section 3-302 OCCUPATIONAL TAX. There is hereby established a biennial occupational tax on each distributor or retailer of alcoholic liquors, including beer containing more than 6% of alcohol by weight, for consumption off the premises, sales in the original package only, which shall be as follows:

(a) The biennial license for an alcoholic liquor distributor's license for each distributing place of business operated in the City by the same licensee and wholesaling and jobbing alcoholic liquors shall be three hundred dollars (\$300).

(b) The license fee may be paid in two annual installments by paying one-half at the time of the application and the remaining one-half plus 10% of such remaining balance of the license fee due and payable one year from the date of issuance of the license. Failure to pay the full amount due under this paragraph on the date it is due shall result in the automatic cancellation of such license for the remainder of the license term.”

SECTION 4. AMENDMENT. Section 3-701 of the Cheney Municipal Code shall be amended to read as follows:

“Section 3-701 DEFINITIONS. As used in this article, the words and phrases herein defined shall have the following meaning, unless the context otherwise requires:

(a) Beer means a beverage, containing more than 6% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

(b) Cereal Malt Beverage means enhanced cereal malt beverage and 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.

(c) Keg means a reusable container of beer or cereal malt beverage having a liquid capacity of four or more gallons.

(d) Legal age for consumption means 21 years of age.

(e) Person means any natural person, corporation, partnership, limited liability company, trust or association.

(f) Retailer means a person who sells at retail, or offers for sale at retail, beer or cereal malt beverage for use or consumption and not for resale in any form, and includes sales of beer or cereal malt beverage in a keg returnable to the seller. Such terms shall not refer to or mean sales by a distributor or sales by one retailer to another.

(g) Sell or sell at retail refers to and means sales of beer or cereal malt beverage for use or consumption and not for resale in any form, and includes sales of beer or cereal malt beverage in a keg returnable to the seller. Such terms shall not refer to or mean sales by a distributor or sales by one retailer to another.

(h) Proper proof of identification means a photographic motor vehicle operator's license, a valid passport, a United States military identification card, a Kansas photographic non-driver's identification card or other official or apparently official document, containing a photograph, signature and birth date of the person."

SECTION 5. REPEAL. All ordinances or parts of ordinances in conflict herewith are hereby repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

SECTION 6. EFFECTIVE DATE. This ordinance shall be in force and effect on April 1, 2019 after publication of its summary in the official City newspaper.

Passed by the City Council this 14th day of March, 2019.

Approved by the Mayor this 14th day of March, 2019.

MAYOR, LINDA BALL

SEAL
ATTEST:

CITY CLERK, DANIELLE YOUNG