

Introduced: March 19, 2019
Passed: March 19, 2019
Published: March 22, 2019

ORDINANCE NO 2019 - 2

AN ORDINANCE AMENDING CHAPTER 18 – ALCOHOLIC LIQUORS AND BEVERAGES OF THE CODE OF THE CITY OF HUTCHINSON, KANSAS.

WHEREAS, effective April 1, 2019, the State of Kansas has granted cereal malt beverage license holders the authority to sell beer containing not more than six percent (6%) alcohol by volume in addition to existing cereal malt beverage products;

WHEREAS, substantial revisions of the Kansas Statutes related to the above subject matter require revisions to Chapter 18. Alcoholic Liquors and Beverages of the Hutchinson City Code.

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

Section 1. That Section 18-101. Definitions of Article I. General Provisions. of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Article I. General Provisions

Sec. 18-101. Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for purposes of this chapter, have the meanings given them in this section.

“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.

“Alcoholic liquor” means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, alcoholic candy and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being, but shall not include any cereal malt beverage.

“Barrier” means any natural or manmade obstruction which precludes direct traffic between a church or school and a private club, drinking establishment or a place of business where cereal malt beverages are sold, and is of such a character that it

completely separates such establishments, including parking facilities. Barriers include, but are not limited to, rivers, railroad tracks, levees and drainage ditches.

“Beer” modified or limited by other words, means a beverage containing more than 3.2% 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.

“Beneficial interest” shall not include any interest a person may have as owner, operator, lessee or franchise holder of a licensed hotel or motel on the premises of which a club or drinking establishment is located.

“Bus” means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

“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” means 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 is more than 3.2% alcohol by weight.

“Cereal malt beverage license” means a license authorizing the sale of cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, and the sale of beer containing not more than 6% alcohol by volume.

“City” means the City of Hutchinson, Kansas.

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

“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.

“Club” means a Class A or Class B club.

“Club and Drinking Establishment Act” means the Kansas Club and Drinking Establishment Act, K.S.A. 41-2601 and following, and amendments thereto.

“Conviction,” “Convicted,” “Adjudged Guilty” and other words of like import shall include being placed on diversion, regardless of whether any such diversion program is successfully completed.

“Crime of Moral Turpitude” means a crime involving dishonesty.

“Department” means the Kansas Department of Revenue.

“Director” means the director of alcoholic beverage control of the Department.

“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 the Kansas liquor control act or cereal malt beverage for sale or resale to retailers licensed under the cereal malt beverage act, K.S.A. 41-2702 and amendments thereto.

“Drinking establishment” means premises which may be open to the general public, where alcoholic liquor by the individual drink is served.

“Employee” means any person employed in the business of selling cereal malt beverages or alcoholic liquor by a licensee.

“Food” means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

“Governing Body” means the governing body of the City of Hutchinson, Kansas.

“Gross revenues” means only that income derived from cereal malt beverages, alcoholic liquor and other food consumables.

“Hotel” has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.

“Individual drink” means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term “individual drink” includes beverages containing not more than: (1) Eight ounces of wine; (2) thirty-two ounces of beer or cereal malt beverage; or (3) four ounces of a single spirit or a combination of spirits.

“K.S.A.” means the Kansas Statute Annotated, as they are from time-to-time amended.

“Liquor Control Act” means the Kansas Liquor Control Act.

“Licensee” means any person to whom a current cereal malt beverage license has been issued by the governing body of the City, authorizing the sale of cereal malt beverages and beer containing not more than 6% alcohol by volume and/or any person to whom a current club, drinking establishment, hotel, caterer's, or temporary license has been issued by the Department, authorizing the sale of alcoholic liquor.

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

“Manufacturer” shall have the meaning ascribed to it by K.S.A. 41-102 et seq. and amendments thereto.

“Minor” means any person under 21 years of age.

“Morals charge” means a charge involving the sale of sexual relations; procuring any person; soliciting a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape, incest; gambling; illegal cohabitation; adultery; bigamy; or a crime against nature.

“Open saloon” means a place, public or private, where alcoholic liquor is sold or offered or kept for sale by drink or in any quantity of less than 100 milliliters (3.4 fluid ounces) or sold or offered or kept for sale for the consumption on the premises where sold, but does not include any premises where the sale of liquor is authorized by this article and by the Club and Drinking Establishment Act, or any microbrewery or farm winery, if authorized by Kansas statute.

“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 or cereal malt beverage, to contain and to convey any alcoholic liquor or cereal malt beverage.

“Person” means any natural person, firm, corporation, partnership or association.

“Place of business” means any place, except a tavern, at which cereal malt beverage and/or alcoholic liquor are sold.

“Premises” means the specific area described in the license application and approved as the location upon which cereal malt beverage and/or alcoholic liquor may be sold and/or consumed under the license.

“Public place” means any place to which the general public has access and a right to remain for business, entertainment or other lawful purposes, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas and parks.

“Restaurant” means:

- (1) In the case of a club, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed club premises not less than 50% of its gross receipts from all sales of food and beverages on such premises in a 12-month period;
- (2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 41-2642, and amendments thereto, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and
- (3) in the case of a drinking establishment subject to no food sales requirement under K.S.A. 41-2642, and amendments thereto, a licensed food service establishment.

“Retailer” means any person who sells or offers for sale any cereal malt beverage or alcoholic liquor, as the context may require, for use or consumption off the licensed premises of the retailer.

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

“Sell at retail” and **“sale at retail”** mean sales 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 and sales to clubs, licensed drinking establishments, licensed caterer or holders of temporary permits. Such terms shall not mean or include sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

“Special event” means a picnic, bazaar, fair, festival or similar gathering where a temporary permit for the sale of cereal malt beverages is issued pursuant to regulations established by this chapter.

“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 substances.

“Tavern” means any business establishment, licensed to sell cereal malt beverages for consumption on the premises, that derives in any one month of the calendar year less than 30% of its gross revenues from the sale of food for consumption on the premises.

“Class 1 Tavern” means a tavern to which persons younger than twenty-one (21) years of age may not be admitted under any circumstances.

“Class 2 Tavern” means a tavern to which persons over the age of seventeen (17) may be admitted although no one younger than twenty-one (21) years of age may purchase or possess cereal malt beverages.

“Temporary permit” shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.

“This State” means the state of Kansas.

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

“Wine” means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing 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. That Section 18-210. License required; sales not authorized by license. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Cereal Malt Beverages

Sec. 18-210. License required; sales not authorized by license.

a. No person shall sell any cereal malt beverage and beer containing not more than 6% alcohol by volume at retail within the corporate limits of the City without having in his or her possession for each place of business an unexpired and unrevoked license issued by the City, all as provided in this chapter.

b. A person holding a license to sell cereal malt beverages and beer containing not more than 6% alcohol by volume at retail may sell such products only in original and unopened containers, not for consumption upon the premises. A person holding a license to sell cereal malt beverages and beer containing not more than 6% alcohol by volume for consumption on the premises may not sell cereal malt beverages and beer containing not more than 6% alcohol by volume for consumption off the premises.

c. A special event license (as described in K.S.A. 41-2703(e)) may be issued for the sale of cereal malt beverages and beer containing not more than 6% alcohol by volume for consumption on the licensed premises of a special event. Such license shall be issued only for the day(s) named therein and, in any event, shall not exceed three (3)

consecutive days. A special event license shall specify the premises for which the license is issued. The dates and hours of operation during the special event shall be specified in the license. A special event license shall not be issued to the same person or organization more than four times in any one calendar year period.

Section 3. That Section 18-212. Consideration of application by governing body. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-212. Consideration of application by governing body.

a. If the application for a license is in proper form, accompanied by the license fee and other required fees and all required inspections and investigations have been satisfactorily completed, the governing body shall, if it approves the same, issue a license to the applicant; provided, that no license shall be issued to:

- (1) A person who is not a resident of the City or of Reno County, and who has not been a resident in good faith of the State at least one (1) year prior to the application and a resident of Reno County for at least six (6) months prior to the filing of the application;
- (2) A person who is not of good character and reputation in the community in which he or she resides;
- (3) A person who is not a citizen of the United States;
- (4) A person who, within two (2) years immediately preceding the date of making application, has been convicted of a felony or of any crime involving moral turpitude, or been adjudged guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs, or of the violation of any other intoxicating liquor law of any city, state or of the United States;
- (5) A partnership, unless all members of such partnership shall otherwise be qualified to obtain a license;
- (6) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;
- (7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of

such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which:

- (a) has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto, this chapter or its counterpart in any other municipality; or
 - (b) has been convicted of a violation of the Club and Drinking Establishment Act, the cereal malt beverage laws of this state, this chapter or its counterpart in any other municipality.
- (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; or
- (9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age; provided, that this paragraph (9) shall not apply in determining eligibility for renewal of a license.

b. No license shall be issued for the sale of cereal malt beverages and beer containing not more than 6% alcohol by volume on premises located within 200 feet of any church or public or parochial school and, in addition, no tavern shall be located within 150 feet of a residential zoning district. Such distances shall be measured from the nearest property line of the residential zoning district, church or school to the nearest portion of the exterior of the specific portion of the building in which cereal malt beverages and beer containing not more than 6% alcohol by volume are proposed to be sold or in the event that the licensed premises are located on or include the exterior of a building or an outdoor area, the distance shall be measured to the nearest boundary line of such licensed area; provided, that where the premises to be licensed is separated from a church or school by expressways or arterial streets as designated, or as may be designated from time to time, or where the premises to be licensed is separated from the church or school by a barrier as defined herein, then the above distance requirements shall not apply. These exceptions to the distance requirement of 200 feet from any church or school shall not apply to premises which are to be used as taverns. For the purposes of this chapter, the existence of a barrier shall be determined by the City building official.

c. Renewal of licenses may be made for all establishments presently licensed within 200 feet of any church or public or parochial school or within 150 feet of a residential zoning district, so long as the premises are used or held for use as a tavern or building in which cereal malt beverages and beer containing not more than 6% alcohol by volume are sold. In the event such an establishment ceases to be used for such purposes for a period of 90 days or more, or such premises is used for any other type of business, no new license shall be issued for the sale of cereal malt beverages and beer containing not

more than 6% alcohol by volume on such premises. Periods of time during which taverns or other buildings in which cereal malt beverages and beer containing not more than 6% alcohol by volume are sold are being remodeled or are being repaired because of damage caused by fire or natural disasters shall not be included in computing the above 90 day period; provided, that the remodeling or repair must have been commenced within 90 days after closure of such tavern or other building and completed within a reasonable time thereafter. The licensee of any place of business affected by this subsection shall notify the detective division of the City's police department whenever such tavern or building is to be closed for remodeling or repairs. Such notice shall state the date when remodeling will start and the date it will be completed.

d. The distance requirements set out in this subsection shall not apply to a retailer of cereal malt beverages and beer containing not more than 6% alcohol by volume.

Section 4. That Section 18-214. Posting of license. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-214. Posting of license.

The license so issued to a tavern or place of business to sell cereal malt beverages and beer containing not more than 6% alcohol by volume shall be kept continuously posted in a conspicuous place in such tavern or place of business.

Section 5. That Section 18-215. Suspension of license of Article II. Licenses. of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-215. Suspension of license.

a. The Chief of Police, upon five (5) days' written notice to a person licensed to sell cereal malt beverages and beer containing not more than 6% alcohol by volume pursuant to this article, may suspend such license for a period not to exceed seven (7) days for any cause for which suspension or revocation is authorized by any provision of this Code, and which act or omission does not in his or her judgment justify revocation of such license. The licensee may appeal such order of suspension to the governing body within seven (7) days from the date thereof. In the event such order of suspension is upheld by the governing body the licensee may appeal to the district court of Reno County in the manner provided by K.S.A. 41-2708 and amendments thereto. Any appeal taken from an order of the Chief of Police shall stay the order of suspension until the matter is resolved by the governing body. Any appeal to the District Court shall not stay the order of the governing body.

b. The Chief of Police or any other officer specifically authorized by the Chief of Police, may temporarily suspend a license for the sale of cereal malt beverage and beer containing not more than 6% alcohol by volume when in his or her judgment such action is necessary to preserve or restore the public peace. Any such suspension shall

be effective upon delivery of a written order to the licensee or any other person in control of the licensed premises. No such order of suspension shall be for a period longer than 24 hours; provided, that the Chief of Police or other authorized officer may extend such suspension for additional 24 hour periods up to a total of 72 hours.

Section 6. That Section 18-216. Compliance with health and sanitation requirements. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-216. Compliance with health and sanitation requirements.

The licensee, in the operation of a place of business or tavern selling cereal malt beverage and beer containing not more than 6% alcohol by volume for which a license is issued, shall at all times comply with all of the sanitary and health requirements and ordinances of the City.

Section 7. That Section 18-217. Revocation or suspension of license. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-217. Revocation or suspension of license.

a. The governing body, after a hearing held upon five (5) days written notice to a person holding a license to sell cereal malt beverages and beer containing not more than 6% alcohol by volume, shall revoke such license or cause the same to be suspended for a period not to exceed thirty (30) days, for any of the following reasons:

(1) The licensee fraudulently obtained the license by giving false information in the application therefore;

(2) The licensee, manager, employee or agent has violated any of the provisions of this chapter or any rule or regulation promulgated by the governing body of the City;

(3) The licensee has become ineligible to obtain a license under this chapter;

(4) Drunkenness of the licensee or a manager, employee or agent while on duty and while on the premises for which such license is issued;

(5) The licensee or a manager, employee or agent permits any intoxicated person to remain in such place of business;

(6) The sale or gift, by a licensee, manager, employee or agent, of cereal malt beverages or beer containing not more than 6% alcohol by volume to those under 21 years of age;

(7) The nonpayment of any license fees or other fees or charges payable to the City hereunder;

(8) For a licensee, manager, employee or agent to permit gambling in or upon licensed premises;

(9) For a licensee, manager, employee or agent to permit any person to mix drinks with materials purchased in such place of business or brought in for that purpose, unless such place of business is also licensed as a club or drinking establishment under the laws of the State;

(10) For employment of persons under 21 years of age in dispensing cereal malt beverages and beer containing not more than 6% alcohol by volume in a tavern, or under 18 years of age in dispensing cereal malt beverages and beer containing not more than 6% alcohol by volume in a food service establishment or for off premises consumption;

(11) For employment of a person who has been adjudged guilty of a felony, an offense involving a morals charge, a crime of moral turpitude or a violation of an alcoholic liquor or drug charge. The chief of police may require any employee to submit to fingerprinting to determine if a violation of this section has occurred; the failure of an employee to submit to fingerprinting, if required by the chief of police, shall be prima facie evidence that such employee is ineligible for employment under the provisions of this paragraph;

(12) For the sale or possession of or for permitting any person to use or consume upon or in said premises alcoholic liquor, as defined in this Code, except in a place of business licensed as a club or drinking establishment pursuant to this chapter and Article 26 of Chapter 41 of Kansas Statutes Annotated;

(13) For failure to maintain sufficient records to determine the percentage of gross revenues obtained from sales of cereal malt beverage and beer containing not more than 6% alcohol by volume;

(14) For failure to permit the inspection of such records at all times during business hours by proper agents of the City;

(15) For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;

(16) For selling or providing cereal malt beverage or beer containing not more than 6% alcohol by volume to any person who is intoxicated and who thereafter and by reason of such intoxication or where such intoxication is a contributing factor, violates any ordinance of the City, or law of the State or of the United States.

(17) For violation of any provision of this chapter relating to the presence of a minor in or upon licensed premises, to the possession or consumption of cereal malt beverage or beer containing not more than 6% alcohol by volume by a minor in or upon licensed premises or to cereal malt beverage or beer containing not more than 6% alcohol by volume obtained by a minor from a licensee, regardless of where possessed or consumed.

b. In the event a licensee has been subject to two suspensions pursuant to this Code within the preceding twelve (12) month period, his or her license shall be revoked upon the third such violation.

c. Within twenty (20) days after the order of the governing body suspending or revoking any license, the licensee may appeal from such order to the District Court of Reno County in the manner provided by K.S.A. 41-2708 and amendments thereto; provided, that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of any such appeal. In case of the revocation of a license, no new license shall be issued to such person or to any person acting for or on behalf of such person, for a period of one (1) year after such revocation becomes effective.

Section 8. That Section 18-219. Whole license. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-219. Wholesale license.

It shall be unlawful for any wholesaler or distributor, or any agent or employee thereof, to sell or deliver cereal malt beverages and beer containing not more than 6% alcohol by volume within the corporate limits of the City to persons authorized under this chapter to sell the same within this City, unless such wholesaler or distributor has first secured a license from the City Clerk and a registration from the State, authorizing such sales as provided by law.

Section 9. That Section 18-220. Record keeping; inspections. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-220. Record keeping; inspections.

Every place of business or tavern shall maintain sufficient records to indicate the percentage of gross revenues obtained from the sale of cereal malt beverages and beer containing not more than 6% alcohol by volume, shall permit inspection of such records at all times during business hours by the City Clerk or by any person designated by him and shall furnish at his or her own expense copies of any such records promptly upon request of the City Clerk.

Section 10. That Section 18-221. Lighting and enclosure requirements. of Article II. Licenses of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-221. Lighting and enclosure requirements.

a. The interior of any building wherein cereal malt beverages and beer containing not more than 6% alcohol by volume are sold pursuant to a license issued pursuant to this chapter shall be adequately lighted during all business hours with a minimum of at least one foot-candle of light 30 inches above the floor in all portions of the building to which the public has access.

b. Any licensed premises which includes the exterior of a building and/or an outdoor area must be adequately lighted during all business hours.

c. Any licensed premises which includes the exterior of a building must be enclosed by a fence in such a way as to allow access only through the interior of the building.

d. Any licensed premises which is an outdoor area must have its boundaries clearly marked or fenced so as to allow access only through an official gate or entrance.

Section 11. That Section 18-310. Sale of cereal malt beverage. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Cereal Malt Beverages

Sec. 18-310. Sale of cereal malt beverage.

The sale of cereal malt beverages and beer containing not more than 6% alcohol by volume at Memorial Hall may be permitted pursuant to Sec. 14-122 and the sale of cereal malt beverages and beer containing not more than 6% alcohol by volume at the Sports Arena may be permitted pursuant to Sec. 14-123.

Section 12. That Section 18-311. Regulation of certain business practices. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-311. Regulation of certain business practices.

a. No cereal malt beverages or beer containing not more than 6% alcohol by volume may be consumed, sold or otherwise distributed, nor the premises on which a tavern is located be open or in use:

(1) between the hours of 12 midnight and 6 a.m.; or

(2) on Sunday, except in a place of business or special event which is licensed to sell cereal malt beverages and beer containing not more than 6% alcohol by volume for consumption on the premises and which derives not less than 30% of its gross revenues from the sale of food for consumption on the licensed premises;

provided, that nothing herein shall be construed to prohibit an operator of a tavern or place of business from having cereal malt beverages or beer containing not more than 6% alcohol by volume in his or her possession during excluded hours while he or she is in such tavern or place of business.

b. No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverages and beer containing not more than 6% alcohol by volume for consumption on the premises, shall

(1) Offer or serve any free drink to any person;

(2) Offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee;

(3) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price;

(4) Sell, offer to sell or serve any drink to any person on any one day at a price less than that charged to the general public on that day;

(5) Increase the serving size of cereal malt beverage or beer containing not more than 6% alcohol by volume without increasing proportionately the price regularly charged for the drink on that day;

(6) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or beer containing not more than 6% alcohol by volume or the awarding of drinks as prizes;

(7) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under paragraphs "b(1)" through "b(6)";

(8) Sell, offer to sell or serve any drink of cereal malt beverage or beer containing not more than 6% alcohol by volume for consumption off the premises; provided, that this paragraph shall not be construed to prohibit the sale of cereal malt beverages or beer containing not more than 6% alcohol by volume in the original unopened container for such consumption; or

(9) Knowingly allow or permit any person to remove a drink of cereal malt beverage or beer containing not more than 6% alcohol by volume or alcoholic liquor from the licensed premises.

c. Every retailer, or employee or agent of a retailer, licensed as a tavern shall verify the age of each and every person who enters the licensed premises. Fraudulent possession or use of an identification card shall not constitute a defense to an administrative or criminal charge that the licensee has permitted a minor to enter to remain upon the licensed premises, sold or distributed cereal malt beverage or beer containing not more than 6% alcohol by volume to a minor or has permitted a minor to possess or consume cereal malt beverage or beer containing not more than 6% alcohol by volume upon the licensed premises.

d. Nothing in this section shall prohibit a retailer from offering free food or entertainment at any time.

e. Violation of any provision of this chapter shall be grounds for suspension or revocation of a license issued pursuant to the provisions of this chapter.

f. Notwithstanding any provision to the contrary in this section, cereal malt beverages or beer containing not more than 6% alcohol by volume may be sold on premises which are licensed pursuant to this article and also licensed as a club by the State, at any time alcoholic liquor is allowed by law to be served thereon.

Section 13. That Section 18-312. Removal from licensed premises prohibited. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-312. Removal from licensed premises prohibited.

It shall be unlawful for any person to remove any cereal malt beverage or beer containing not more than 6% alcohol by volume from premises licensed for consumption on the premises.

Section 14. That Section 18-313. Private rooms and closed booths prohibited. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-313. Private rooms and closed booths prohibited.

No private rooms or closed booths shall be operated in a tavern or place of business selling cereal malt beverages and beer containing not more than 6% alcohol by volume. This provision shall not apply if the licensed premises is also currently licensed as a club.

Section 15. That Section 18-314. Sale of cereal malt beverage on credit prohibited. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-314. Sale of cereal malt beverage or beer containing not more than 6% alcohol by volume on credit prohibited.

a. No person shall sell or furnish cereal malt beverage or beer containing not more than 6% alcohol by volume at retail to any person on credit; credit card or passbook; on order of a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered.

b. No distributor shall sell or furnish cereal malt beverage or beer containing not more than 6% alcohol by volume to a retailer on credit; on a passbook; on order of a store; in exchange for any goods, wares or merchandise; in payment for any service rendered or to be rendered; or by extension of credit of any kind, type or class.

c. Any person violating the provisions of this section shall be guilty of a misdemeanor.

Section 16. That Section 18-315. Regulations applicable to taverns authorized to admit minors 18 years of age or older. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-315. Regulations applicable to taverns authorized to admit minors 18 years of age or older.

The provisions of this section shall apply to any place of business licensed as a tavern authorized to admit minors 18 years of age or older:

a. Such tavern shall not sell or otherwise distribute any cereal malt beverage or beer containing not more than 6% alcohol by volume by the pitcher or otherwise in a quantity larger than a single drink of cereal malt beverage or beer containing not more than 6% alcohol by volume.

b. No person shall be permitted to purchase more than one drink of cereal malt beverage or beer containing not more than 6% alcohol by volume at a time and no person shall be furnished a second or subsequent drink of cereal malt beverage or beer

containing not more than 6% alcohol by volume until the one previously purchased has been completely consumed or otherwise discarded.

c. The licensee shall verify the age of each and every person who enters the licensed premises. Such verification shall be accomplished at the time a person first enters the premises and shall be repeated each and every time such person reenters the premises.

1. No person shall be permitted to enter upon premises licensed as a tavern pursuant to City ordinance unless such person's age is substantiated by means of:

(a) a motor vehicle operator's license bearing a current photograph of the person to which it is issued; or

(b) an identification card bearing a current photograph of the person, issued to such person by the State of Kansas through a driver's license examiner.

2. For the purposes of this subsection, no operator's license or other identification card shall be accepted as proof of age of the person holding the same if such card, or any portion thereof, is so damaged or deteriorated as to be illegible or the photograph unrecognizable, or if such identification card bears any evidence whatever of alteration.

3. Fraudulent possession or use of an identification card shall not constitute a defense to an administrative or criminal charge that the licensee has sold or distributed cereal malt beverage or beer containing not more than 6% alcohol by volume to a minor or permitted a minor to possess or consume cereal malt beverage or beer containing not more than 6% alcohol by volume upon the licensed premises.

d. At the time a person 21 years of age or older enters any such tavern, he or she shall be marked by a stamp or other mark which cannot be readily removed, altered or duplicated. Thereafter, no cereal malt beverage or beer containing not more than 6% alcohol by volume shall be sold or otherwise distributed to any person not bearing such stamp or other mark, nor shall any such person be permitted to possess or consume cereal malt beverage or beer containing not more than 6% alcohol by volume upon the licensed premises; provided, that fraudulent use of any such stamp or other mark by a minor shall not constitute a defense to an administrative or criminal charge that the licensee has sold or distributed cereal malt beverage or beer containing not more than 6% alcohol by volume to a minor or permitted a minor to possess or consume cereal malt beverage or beer containing not more than 6% alcohol by volume upon the licensed premises.

e. Any duty imposed upon a licensee pursuant to this section may be delegated to an employee, agent or other representative of the licensee; provided, that no such delegation shall relieve a licensee of responsibility for nonfeasance, misfeasance or malfeasance in the performance of such duty, nor shall any other provision of City ordinance operate to relieve a licensee of such responsibility.

f. Nothing herein shall be construed to authorize a place of business licensed as a tavern to admit any person under the age of 18.

Section 17. That Section 18-316. Prohibitions relating to minors generally. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-316. Prohibitions relating to minors generally.

a. No minor shall enter or remain on the premises of a tavern unless such tavern be licensed to permit the presence of minors 18 years of age or older. Violation of this subsection is a misdemeanor.

b. No licensee, manager, employee or agent shall permit a minor to enter or remain on the premises of a tavern unless such tavern be licensed to permit the presence of minors 18 years of age or older.

c. No licensee, manager, employee or agent shall permit a minor to consume or purchase any cereal malt beverage or beer containing not more than 6% alcohol by volume in or about a place of business.

d. No licensee, manager, employee or agent shall permit a minor to possess cereal malt beverage or beer containing not more than 6% alcohol by volume in or about a place of business; provided, that an employee who is not less than 18 years of age may dispense or sell cereal malt beverage or beer containing not more than 6% alcohol by volume if:

(1) The place of business is licensed only to sell cereal malt beverage and beer containing not more than 6% alcohol by volume at retail in original and unopened containers for consumption off the premises; or

(2) The place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross revenues from the place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

Section 18. That Section 18-317. Notice regarding unlawful consumption or possession. of Article III. Sales of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-317. Notice regarding unlawful consumption or possession.

A notice, in substantially the following form, shall be permanently posted on or near all entrances to all places of business licensed for sale of cereal malt beverages and beer containing not more than 6% alcohol by volume for consumption on the premises, and on or near all counters or coolers used by other places of business licensed for sale of cereal malt beverages and beer containing not more than 6% alcohol by volume for off premises consumption, for display and dispensing of cereal malt beverages and beer containing not more than 6% alcohol by volume:

NOTICE

It is unlawful for any person under the age of 21 to purchase cereal malt beverage or beer containing not more than 6% alcohol by volume.

It is unlawful for any person to drink cereal malt beverage or beer containing not more than 6% alcohol by volume or alcoholic liquor or to have in his or her possession any cereal malt beverage or beer containing not more than 6% alcohol by volume or alcoholic liquor except in the original package or container which shall not have been opened:

a. in or upon any highway, road, street, alley, sidewalk, public easement or automobile parking lot, whether such lot be publicly or privately owned, or in or upon any vehicle while in or upon any such place; or

b. in or upon the premises of any cereal malt beverage licensee but outside the serving area of such licensed premises.

Section 18. That Section 18-410. Consumption of cereal malt beverage. of Article IV. Consumption of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Cereal Malt Beverages

Sec. 18-410 Consumption of cereal malt beverage and beer containing not more than 6% alcohol by volume. The consumption of cereal malt beverages and beer containing not more than 6% alcohol by volume at Memorial Hall may be permitted pursuant to Sec. 14-122 and the consumption of cereal malt beverages and beer containing not more than 6% alcohol by volume at the Sports Arena may be permitted pursuant to Sec. 14-123.

Section 19. That Section 18-411. Unlawful possession or use of identification. of Article IV. Consumption of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-411. Unlawful possession or use of identification.

a. It shall be unlawful for any minor to:

1. obtain or possess or attempt to obtain or possess any motor vehicle operator's license or other tangible form of identification which was originally issued to or for the purpose of identifying any other person;

2. use or attempt to use any motor vehicle operator's license or other tangible form of identification, originally issued to another person, for the purpose of gaining entry into any place of business licensed as a tavern, or for the purpose of purchasing or otherwise obtaining cereal malt beverage or beer containing not more than 6% alcohol by volume in any form; or

3. use or attempt to use any motor vehicle operator's license or other tangible form of identification, any portion of which has been defaced or obliterated, or altered in any way other than by ordinary wear and tear, for the purpose of gaining entry into any place of business licensed as a tavern, or for the purpose of purchasing or obtaining cereal malt beverage or beer containing not more than 6% alcohol by volume in any form.

b. It shall be unlawful for any person to aid or abet another person in the commission of a violation of subsection "a" of this section.

c. Any licensee and any agent or employee of a licensee may take possession of any motor vehicle operator's license or other identification card used, or attempted to be used, in violation of this section. Any such identification card shall be promptly delivered to the police department by the licensee or other person in possession thereof, together with such information as may be available with respect to the identity of the person making or attempting to make unlawful use of such identification card.

Section 20. That Section 18-412. Unlawful possession or use of identification. of Article IV. Consumption of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-412. Possession on licensed premises prohibited.

No person shall have in his or her possession any alcoholic liquor other than beer containing not more than 6% alcohol by volume on the premises where cereal malt beverages or beer containing not more than 6% alcohol by volume are sold, other than in a club or drinking establishment licensed by the Director.

Section 21. That Section 18-413. Possession of open container in certain places prohibited. of Article IV. Consumption of Chapter 18 of the Code of the City of Hutchinson be amended as follows:

Sec. 18-413. Possession of open container in certain places prohibited.

It is unlawful for any person to have any cereal malt beverage or beer containing not more than 6% alcohol by volume in his or her possession, except in the original package or container which shall not have been opened, in or upon any highway, road, street, alley, sidewalk, public easement or automobile parking lot, whether such lot be publicly or privately owned, except on such property for which an Outdoor Dining Permit has been issued by the City, or in or upon any vehicle while in or upon any such place, or in or upon the premises of any cereal malt beverage licensee but outside the serving area of such licensed premises, or in Avenue A Park, George Pyle Park, Dillon Nature Center or the Jim P. Martinez Sunflower Trail.

Section 22. That the existing Hutchinson City Code Sections 18-101, 18-210, 18-212, 18-214, 18-215, 18-216, 18-217, 18-219, 18-220, 18-221, 18-310, 18-311, 18-312, 18-313, 18-314, 18-315, 18-316, 18-317, 18-410, 18-411, 18-412 and 18-413 are hereby repealed.

Section 23. That all other sections of Chapter 18 shall remain in full force and effect.

Section 24. This ordinance after its passage and publication once in the official City newspaper shall take effect and be in force from and after April 1, 2019.

PASSED BY THE GOVERNING BODY, this 19th day of March, 2019, for the City of Hutchinson, Kansas.

David A. Inskeep, Mayor

ATTEST:

Karen Weltmer, City Clerk