

ORDINANCE NO.2144

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF AUGUSTA, KANSAS AND AMENDING CHAPTER 3, ARTICLE 1 AND ARTICLE 2 OF THE CODE OF THE CITY OF AUGUSTA, KANSAS, 2010

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF AUGUSTA, KANSAS AS FOLLOWS:

SECTION 1. Section 3-101(d) of Chapter 3, Article 1 of the code of the City of Augusta 2010 is hereby amended to read as follows:

3-101(d). 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 2. Chapter 3, Article 1 of the code of the City of Augusta 2010 is hereby amended to read as follows:

3-201. LICENSE ISSUED BY CITY. The "Cereal Malt Beverage License" issued by the City of Augusta pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in Article 101(d), by those retailers in compliance with this ordinance and other laws and regulations that may apply.

3-202. LICENSE REQUIRED OF RETAILER. (a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverage in any other manner.

3-203. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:

(a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;

(b) The particular place for which a license is desired;

(c) The name of the owner of the premises upon which the place of business is located;

(d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.

(e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;

(f) Each application for a general retailer's license shall be accompanied by a certificate

from the city inspector certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of Chapter 8 of this code.

(g) Each application for a general retailer's license must be accompanied by a certificate from the director of public safety certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of Chapter 7 of this code.

The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the director of public safety of the city for investigation of the applicant. It shall be the duty of the director of public safety to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The director of public safety shall report to the city manager not later than five working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

3-204. LICENSE APPLICATION PROCEDURES. (a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.

(b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.

(c) The clerk's office shall provide copies of all applications to the director of public safety when they are received. The director of public safety will run a record check on all applicants and inspect the premises in accord with Fire Prevention and Health and Building Codes. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.

(d) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above city departments.

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

(f) The City Council shall have the authority to waive the 10-day period set forth in subsection (a) when good and sufficient reasons exist to do so and proper review of the application has been completed by the appropriate City departments.

3-205. LICENSE GRANTED; DENIED. (a) The journal of the governing body shall show the action taken on the application.

(b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.

(c) No license shall be transferred to another licensee.

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

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

3-207. LICENSE, DISQUALIFICATION. No license shall be issued to:

(a) A person who has not been a resident in good faith of the state of Kansas for at least one year immediately preceding application and a resident of Butler 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.
- (j) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under K.S.A. 41-2701, et. Seq.

3-208. RESTRICTION UPON LOCATION. (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 200-foot radius of any church or school.

(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.

3-209. 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, \$100.00 per calendar year in addition to the \$25 State Revenue stamp fee.

(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, \$50.00 per calendar year in addition to the State Revenue stamp fee.

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.

3-210. SUSPENSION OF LICENSE. The director of public safety, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this chapter 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 days from the date of such order.

3-211. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY. The governing body of the city, upon five days' written notice, to a person holding a license to sell enhanced cereal malt beverages shall permanently revoke or cause to be suspended for a period of not more than 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 under this chapter;
- (l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

3-212. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Butler County 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, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

3-213. 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 \$25.00 plus the \$25.00 State Revenue stamp fee. 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.

3-214. 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.

3-215. 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 be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:00 a.m. and 6:00 a.m., or 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 any amendments thereto.

(d) Enhanced cereal malt beverages in the original package may be sold at retail any time allowed by law pursuant to K.S.A. 41-2701 et. seq. and on any Sunday, except Easter, between the hours of 12:00 noon and 8:00 p.m., and on Memorial Day, Independence Day and Labor Day or in a place where such beverages are allowed to be served on the premises pursuant to K.S.A. 41-2701 et. seq. and are 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.

3-216. 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.

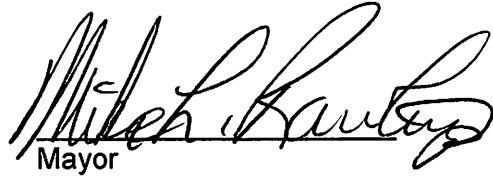
3-217. SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee.

SECTION 2. This ordinance shall be published one time in the official city newspaper.

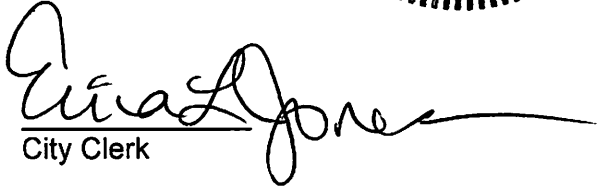
SECTION 3. This ordinance shall take effect and be in force from and after April 1, 2019.

PASSED AND APPROVED this 18th day of March 2019.




Mayor

ATTEST:


City Clerk

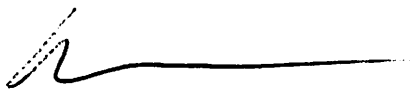
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SUMMARY OF CITY OF AUGUSTA ORDINANCE NO. 2144

Notice is hereby given that the Governing Body of Augusta, Kansas did, on the 18th day of March 2019; pass Ordinance No. 2144, Regulating the Sale of Cereal Malt Beverage and Beer Containing Not More than 6% Alcohol By Volume Within the City of Augusta, Kansas and amending Chapter 3, Article 1 and Article 2 of the Code of The City of Augusta, Kansas, 2010. The complete text of the Ordinance may be obtained or viewed free of charge at the office of the Augusta City Clerk. Additionally, the full text of the Ordinance may be viewed on the City's official website www.augustagov.org for a minimum of one week following the date of this publication.

I hereby certify that this summary of Ordinance No. 2144 is legally accurate and sufficient for publication, pursuant to the provisions of K.S.A. 12-3007.



Austin K. Parker
Augusta City Attorney