

ORDINANCE NO. 3773

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF OSAWATOMIE, KANSAS BY AMENDING CERTAIN SECTIONS OF ARTICLE'S 1 AND 2 OF CHAPTER 4 OF THE CITY OF OSAWATOMIE MUNICIPAL CODE; AND REPEALING EXISTING PROVISIONS

WHEREAS, Kansas Statutes Annotated (K.S.A.) 41-2701 authorizes the licensing of cereal malt beverage (CMB) retailers and provides for local ordinances to be established for the licensing thereof; and

WHEREAS, the Legislature of the State of Kansas, during the 2018 Legislative Session, did amend K.S.A. 41-2701 to allow licensed CMB retailers to also sell beer containing not more than 6% alcohol by volume, referred to as "enhanced CMB," effective April 1, 2019.

WHEREAS, the City of Osawatome desires to bring its local ordinances into alignment with state statutes governing the sale and licensing of enhanced CMB retailers when the state law becomes effective;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION ONE: EXISTING CODE AMENDED. Section 3-101 of Article One of Chapter Three of the Municipal Code of the City of Osawatome is amended to read as follows:

**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 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. 41-2729 and amendments thereto, including beer as defined by K.S.A. 41-102, but not including any such liquor which is more than 6% alcohol by weight.

(e) City Health Department – means the city code enforcement department, or other department designated by the city manager, to administer enforcement of life, health, safety and nuisance codes of the City of Osawatomie.

(f) City Health Officer – means the city code enforcement officer, or other designee of the city manager, responsible for administering the duties of the City health department.

(g) 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.

(h) 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.

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

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

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

(l) 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.

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

(n) 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.

(o) 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 TWO: EXISTING CODE AMENDED.** Section 3-202 of Article Two of Chapter Three of the Municipal Code of the City of Osawatomie is amended to read as follows:

**3-202. 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 health officer 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 city fire chief certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of Chapter 7 of this code.

(h) The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the City with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the City for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The chief shall report to the city 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.

**SECTION THREE: EXISTING SECTIONS OF CODE REPEALED.** Sections 3-101 and 3-202 of the City of Osawatomie Municipal Code as adopted prior to the passage of this Ordinance is hereby repealed.

SECTION FOUR: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and one publication in the official City newspaper.

ADOPTED AND APPROVED by the Governing Body this 14th day of March 2019.

(SEAL)

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L. Mark Govea, Mayor

ATTEST:

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Tammy Seamands, City Clerk