

ORDINANCE NO. **2377**

AN ORDINANCE RELATING TO THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING SECTIONS 5.16.010, 5.16.370, 5.16.380, 5.16.390, 5.16.420, 5.16.430, 5.16.450, 5.16.470 AND 5.16.480 OF THE DERBY MUNICIPAL CODE AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR; AND FURTHER AMENDING CHAPER 5.16 BY ADDITION OF NEW SECTION 5.16.440.

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

Section 1. Section 5.16.010 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.010 - Definitions.

As used in this chapter, the words and phrases herein defined shall have the following meanings:

"Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, 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 and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

"Beer" means a beverage, containing more than three and two-tenths percent alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

"Caterer" has the meaning provided in K.S.A. 41-2601, and amendments thereto.

"Cereal malt beverage" has the meaning provided by K.S.A. 41-2701, and amendments thereto.

"Club," "Class A club," and "Class B club" shall respectively have the meanings provided by K.S.A. 41-2601, and amendments thereto.

"Drink" means an individual serving of any beverage containing alcoholic liquor, or an individual serving of cereal malt beverage.

"Drinking establishment" has the meaning prescribed by K.S.A. 41-2601, and amendments thereto.

"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.

"Farm winery" means a winery licensed by the state of Kansas to manufacture, store and sell domestic table wine and domestic fortified wine.

"Legal age of consumption of cereal malt beverages" means twenty-one years of age; except that "legal age of consumption for cereal malt beverage" shall mean eighteen years of age if at any time the provisions of PL98-363 penalizing states for permitting persons under twenty-one years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

"Liquor" means alcoholic liquor as defined in this section.

"Microbrewery" means a brewery licensed by the state of Kansas to manufacture, store and sell domestic beer.

"Minor" means a person under twenty-one years of age.

"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, to contain and convey any alcoholic liquor, but does not include a sleeve.

"Person" includes any natural person, corporation, partnership, trust or association.

"Place of business" means any place at which cereal malt beverages are sold.

"Retailer" means a person who sells at retail, or offers for sale at retail, alcoholic liquors, but does not include a microbrewery or a farm winery.

"Sell at retail" and "sale at retail" refer to and mean sales for consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits. "Sell at retail" and "sale at retail" do not refer to or mean 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 alcoholic liquor permit.

"Sleeve" means a package of two or more fifty-milliliter (three and two-tenths-fluid-ounce) containers of spirits.

"Special event CMB permit" means a special event retailers' permit for sale of cereal malt beverage, issued pursuant to K.S.A. 41-2701 et seq., and amendments thereto.

"Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

"Temporary alcoholic liquor permit" means a temporary permit for sale of alcoholic liquor, issued pursuant to K.S.A. 41-2601 et seq., and amendments thereto.

"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 added alcohol or spirits or containing sugar added for the purpose of correcting natural tendencies.”

Section 2. Section 5.16.370 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.370 – Retailers - Licenses required.

- A. It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without having first secured a license for each place of business where enhanced cereal malt beverages are to be sold at retail as herein provided.
- B. It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverages in any other manner.”

Section 3. Section 5.16.380 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.380 – License - Application.

- A. 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:
 - 1. The name and residence of the applicant and how long he or she has resided within the State of Kansas;
 - 2. The particular place for which a license is desired;
 - 3. The name of the owner of the premises upon which the place of business is located;
 - 4. The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired;
 - 5. A statement that the applicant is a citizen of the United States and not less than twenty-one years of age and that he or she has not within the 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;
 - 6. Each application for a general retailer's license shall be accompanied by a certificate from the city environmental and zoning officers certifying that he or she has inspected the premises to be licensed and that the same comply with the environmental and zoning ordinances of the city;

7. 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 fire code and/or ordinances of the city;
 8. Each application for a general retailer's license shall be accompanied by a certificate from the county health officer certifying that he or she has inspected the premises to be licensed and that the same complies with the county health laws.
- B. 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 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 article. The chief of police shall report to the city clerk or designee no 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 4. Section 5.16.390 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.390 - License application procedure.

- A. All applications for a new or renewed enhanced cereal malt beverage license shall be submitted to the city clerk or designee at least fifteen days in advance of the governing body meeting at which they will be considered.
- B. The city clerk or designee shall notify the holder of an existing license thirty days in advance of its expiration.
- C. The city clerk or designee shall provide copies of all applications to the chief of police, to the fire marshal, and to the chief building inspector, health department, when they are received. The police department shall run a records check on all applicants and the fire marshal and chief building inspector will inspect the premises in accordance with city fire codes and/or ordinances. The departments will then recommend approval, or disapproval, of applicants within five working days of the receipt of the application.
- D. The governing body will not consider any application for a new or renewed license that has not been submitted fifteen days in advance and been reviewed by the above city departments.
- E. An applicant who does not hold 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.”

Section 5. Section 5.16.420 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.420 - Denial of license.

A. No license shall be issued to:

1. A person who is not a resident of Sedgwick County, has not been a resident of Sedgwick County for at least six months or has not been a resident in good faith of the state of Kansas;
2. A person who has not been a resident of the state of Kansas for at least one year immediately preceding application for such license;
3. A person who is not of good character and reputation in the community in which the person resides;
4. A person who is not a citizen of the United States;
5. A person who, within two years immediately preceding the date of making the application, has been convicted of, released from incarceration for or released from probation or parole for, 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;
6. A partnership, unless all members of the partnership are otherwise qualified to obtain a license;
7. A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;
8. A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications required of a licensee;
9. A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license;
10. 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 this act.

B. After examination of an application for a retailer's license, the governing body of the city may deny a license to a person, partnership or corporation if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation, has been an officer, manager or director or a stockholder owning in the aggregate more than twenty-five percent of the stock of a corporation which has:

1. Had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto, or

2. Been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state, or of a county resolution or city ordinance requiring or prohibiting substantially the same conduct;
- C. Upon denial of a license, the license fee shall be refunded to the applicant.”

Section 6. Section 5.16.430 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.430 - License fee.

A. The license fee shall be as follows:

1. General Retailer. For each place of business selling enhanced cereal malt beverages at retail for consumption on the premises, an amount as established by resolution of the governing body of the city per calendar year;
2. 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, an amount as established by resolution of the governing body of the city per calendar year.

B. The 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 7. New Section 5.16.440 – of the Derby Municipal Code is hereby added and is enacted to read as follows:

”5.16.440 – Suspension of License.

The chief of police, 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 ordinance 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.”

Section 8. Section 5.16.450 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.450 - Revocation or suspension of license.

- A. The governing body of the city, upon five days' written notice to the person holding a license, may revoke or suspend the license for any of the following reasons:
1. The licensee has violated any of the provisions of K.S.A. 41-2701 et seq., or any rules or regulations made by the city;

2. Drunkenness of the licensee, 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 or upon the licensee's place of business;
 3. The sale of enhanced cereal malt beverages to any person under the legal age of consumption of enhanced cereal malt beverage;
 4. Permitting any person to mix drinks with materials purchased in or upon the place of business or brought in for that purpose;
 5. The sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor as defined by K.S.A. 41-102, and amendments thereto; or
 6. The licensee has been convicted of a violation of the Kansas beer and cereal malt keg registration act;
- B. The provisions of subsections (A)(4) and (A)(5) of this section shall not apply if the place of business or premises is also currently licensed as a club or drinking establishment pursuant to the Kansas club and drinking establishment act.
- C. The governing body of the city, upon five days' written notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:
1. The licensee has fraudulently obtained the license by giving false information in the application therefor;
 2. Licensee has become ineligible to obtain a license under this act;
 3. Nonpayment of any license fees;
 4. Permitting any gambling in or upon the licensee's place of business;
 5. Employment of persons under eighteen years of age in dispensing or selling enhanced cereal malt beverages;
 6. Employment or continuation in employment of a person in connection with the sale, serving or dispensing of enhanced cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States; or
 7. Violation of K.S.A. 21-4106 or 21-4107 prior to their repeal or K.S.A. 21-6204, and amendments thereto, in or upon the licensee's place of business.
- D. Within twenty days after the order of the governing body revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal 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."

Section 9. Section 5.16.470 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.470 - Wholesalers and/or distributors.

It is 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 under this article to sell the same within the city unless such wholesaler and/or distributor has first secured a license from the State of Kansas authorizing such sales.”

Section 10. Section 5.16.480 of the Derby Municipal Code is hereby amended to read as follows:

“5.16.480 - Business regulations.

Except as otherwise expressly provided herein, all persons licensed pursuant to this article shall comply with the following regulations:

- A. The place of business licensed and operated under this article shall at all times have a front and rear exit unlocked when opened 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. No enhanced cereal malt beverages may be sold or dispensed:
 1. Between the hours of twelve midnight and six a.m.;
 2. In the original package, before twelve noon or after eight 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 and which derives not less than thirty percent of its gross receipts from the sale of food or consumption on the licensed premises. Closing hours for clubs shall conform to K.S.A. 41-2614 and any amendments thereto.
- D. All patrons or customers of a place of business licensed as a general retailer shall exit and be off the premises of the place of business not later than one a.m.; provided, that a place of business which is licensed to sell enhanced cereal malt beverage for consumption on the premises and which derives not less than thirty percent of its gross receipts from the sale of food or consumption on the licensed premises may remain open after midnight to supply food and food service only; provided, further, that this subsection shall not apply to licensed private clubs and drinking establishments.
- E. 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 licensed as a club by the state of Kansas.

- F. 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 of Kansas shall be opened to the police and not to the public.
- G. It is 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.
- H. 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.
- I. No licensee or agent or employee of the licensee shall sell or permit the sale of enhanced cereal malt beverage to any person under the legal age for consumption.
- J. 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.
- K. 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.
- L. No licensee shall employ any person who has been judged guilty of a felony.
- M. No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply to premises also licensed as a club pursuant to the Club and Drinking Establishment Act.
- N. No licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage to consume; or purchase enhanced cereal malt beverage in or about a place of business, and no licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage to possess enhanced cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than eighteen years of age may dispense or sell enhanced cereal malt beverages if:
 - 1. The licensee's place of business is licensed only to sell enhanced cereal malt beverage at retail in original and unopened containers and not for consumption on the premises; or
 - 2. The licensee's place of business is a licensed food service establishment as defined by K.S.A. 36-501 and amendments thereto, and not less than fifty percent of the gross receipts from the licensee's place of business is derived from the sale of food or consumption on the premises of the licensed place of business.
- O. No person shall have alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the Club and Drinking Establishment Act.
- P. No licensee or agent or employee of the licensee shall:
 - 1. Offer or serve any free drink to any person;
 - 2. Offer to 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, except at private functions not open to the general public;

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, except at private functions not open to the general public;
5. Increase the size of a drink of enhanced cereal malt beverage 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 enhanced cereal malt beverage or the awarding of drinks as prizes; or
7. Advertise or promote in any way on or off the licensed premises, any of the practices prohibited under this subsection.

Q. Nothing in subsection P shall be construed to prohibit a retailer from:

1. Offering free food or entertainment at any time;
2. Including a drink as part of a meal package; or
3. Selling or delivering wine by the bottle or carafe.”

Section 11. Repeal

Original sections 5.16.010, 5.16.370, 5.16.380, 5.16.390, 5.16.420, 5.16.430, 5.16.450, 5.16.470, and 5.16.480 of the Derby Municipal Code are hereby repealed. All other provisions of the Municipal Code of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein. All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

Section 12. Severability

Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

Section 13. Publication

This ordinance or a summary thereof shall be published once in the official city newspaper in accordance with state law.

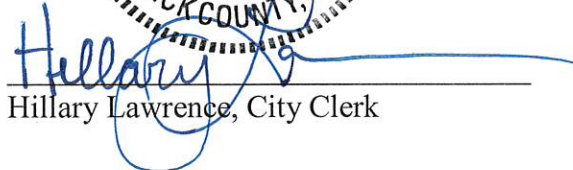
Section 14. Effective Date


This Ordinance shall take effect and be in force from and after April 1, 2019.

PASSED by the City Council this 12th day of March, 2019 and **SIGNED** by the Mayor.




Seal
Attest:


Hillary Lawrence, City Clerk


Randy White, Mayor

Approved as to form:


Jacqueline R. Butler, City Attorney