

(Summary Published in The Morning Sun on March 29, 2019)

**ORDINANCE NO. G-1297**

AN ORDINANCE amending Sections 6-1, 6-2 and 6-181 and creating Sections 6-198 through 6-215 of the Pittsburg City Code to regulate the sale of beer containing not more than 6% alcohol by volume within the City of Pittsburg, Kansas.

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

Section 1. Section 6-1 of the Pittsburg City Code is amended to read as follows:

**Sec. 6-1. – Purchase, possession or consumption by underage persons; penalties for violation of Section provisions.**

- (a) No person under the age of 21 years shall represent that he is 21 years of age or older for the purpose of asking for, purchasing or receiving alcoholic liquor, cereal malt beverages or enhanced cereal malt beverages from any association, partnership, corporation, or natural person, except in cases authorized by law.
- (b) No person under 21 years of age shall possess or consume alcoholic liquor, cereal malt beverages or enhanced cereal malt beverages or attempt to purchase or purchase alcoholic liquor or cereal malt beverages.
- (c) No person shall knowingly sell, give away, procure, deliver, or permit the sale, gift, procuring or delivery of any alcoholic liquor, cereal malt beverages or enhanced cereal malt beverages to or for any person who is disabled or is physically or mentally incapacitated due to consumption of cereal malt beverage, or enhanced cereal malt beverage or alcoholic liquor.
- (d) No person shall, either directly or indirectly, sell, give away, procure, deliver, or permit the sale, gift, procuring or delivery of any cereal malt beverage, enhanced cereal malt beverage or alcoholic liquor to or for any person who is under 21 years of age.
- (e) Violations of subsections (c) or (d) of this Section by any association, partnership, corporation or natural person, including the agents, officers, and employees thereof, is a misdemeanor punishable by a fine of not less than \$100.00 and not more than \$250.00 or imprisonment not exceeding 30 days, or both, for each separate violation. In addition, the judge of the municipal court may suspend the cereal malt beverage license and/or retailer's license of any license holder found guilty of violating any of such provisions for a period of

time not to exceed 60 days. Notwithstanding anything to the contrary in this Section, it shall not be a violation by the individual's parent or legal guardian if the possession or consumption of the alcoholic liquor, enhanced cereal malt beverage or cereal malt beverage by a person under 21 years of age is permitted, supervised, and furnished by such parent or legal guardian.

- (f) Violations of subsections (a) and (b) of this Section by a person 18 or more years of age but less than 21 years of age is a misdemeanor punishable by a minimum fine of \$200.00. In addition to a fine, the court may order the offender to do either or both of the following:
  - (1) Perform 40 hours of public service; or
  - (2) Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans.
- (g) Upon a first conviction of a violation of this Section by a person 18 or more years of age but less than 21 years of age, the court shall order the division of vehicles to suspend the driving privilege of such offender for 30 days.
- (h) Upon a second conviction of a violation of this Section by a person 18 or more years of age but less than 21 years of age, the court shall order the division of vehicles to suspend the driving privilege of such offender for 60 days.
- (i) Upon a third or subsequent conviction of a violation of this Section by a person 18 or more years of age but less than 21 years of age, the court shall order the division of vehicles to suspend the driving privilege of such offender for one year.

Section 2. Section 6-2 of the Pittsburgh City Code is amended to read as follows:

**Sec. 6-2. – Prohibiting entry of persons under age 21.**

- (a) *Definitions* . The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Alcoholic liquor, caterer, cereal malt beverage, enhanced cereal malt beverage, class A club, class B club, club, drinking establishment, and temporary permit* mean as set forth in [Section 6-181](#).

*Axe throwing club* means a premises which include a minimum of four axe throwing lanes and where the axes, throwing lanes, ceiling height, lane width and safety standards adhere to the restrictions and specifications set forth herein in subsection (d).

*Dispense or sold* means to furnish, transfer, exchange or barter in any manner or by any means whatsoever, with or without a consideration, cereal malt beverage, enhanced cereal malt beverage and/or alcoholic liquor.

*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.

*Licensee or permit holder* means either a partnership, association or corporation including the agents, officers, and employees thereof, or a natural person holding a license or permit to operate a club or drinking establishment, or holding a caterer's license, a temporary permit, or a license to sell cereal malt beverage, enhanced cereal malt beverage, and/or alcoholic liquor for consumption on the premises.

*Pool hall* means a premises where the primary business relates to customers engaging in billiards or pool.

*Premises* means the location of any place, whether or not licensed for the sale of cereal malt beverage and/or alcoholic liquor, where either cereal malt beverage, enhanced cereal malt beverage or alcoholic liquor is dispensed or sold for consumption on the premises.

*Restaurant* means a business that prepares and sells food directly to consumers for immediate consumption on the premises.

(b) *Unlawful entry; licensee or permit holder absolutely liable.*

- (1) It shall be unlawful and the licensee or permit holder shall be absolutely liable, whether with or without consent or knowledge, if any person under 21 years of age enters or remains upon any premises where cereal malt beverage, enhanced cereal malt beverage and/or alcoholic liquor is dispensed or sold for consumption on the premises. This Section shall not apply to persons under 21 years of age who are on the premises if accompanied by a parent or a legal guardian.
- (2) It shall be unlawful for any licensee or permit holder, or any owner, officer or employee thereof, to knowingly or unknowingly permit any 21 years of age to enter or remain upon any premises where cereal malt beverage, enhanced cereal malt beverage and/or alcoholic liquor is dispensed or sold for consumption on the premises. This Section shall not apply to persons under 21



years of age who are on the premises if accompanied by a parent or legal guardian.

(3) It shall be a defense to the prosecution hereof if the person under 21 years of age exhibited to the defendant an unexpired driver's license, state nondriver's identification card or other official or apparently official document, containing a photograph of the person which purported to establish that such person was 21 or more years of age.

(c) *Unlawful entry; minor* . It shall be unlawful for any person under 21 years of age to enter or remain upon the premises of a licensee or permit holder where cereal malt beverage and/or alcoholic liquor is dispensed or sold for consumption on the premises. This Section shall not apply to persons under 21 years of age who are on the premises accompanied by a parent or a legal guardian.

(d) *Premises exempted*.

(1) This Section shall not apply to and shall exempt the following licensees or permit holders, and any owners, officers or employees thereof:

- i. Premises used primarily as a bowling alley;
- ii. Any member in good standing of a veteran's organization while on the premises of the veteran's organization if he is a member thereof;
- iii. A restaurant which derives at least 60 percent of its gross revenues from the bona fide sale of food for consumption on the premises; and
- iv. Premises used primarily as an axe throwing club which shall include; a minimum of four axe throwing lanes with a minimum ceiling height of ten feet and a minimum lane width of six feet within the axe throwing lanes; which prohibits the throwing of axes under 12 inches in length and with a maximum head weight over two pounds; and which complies with the safety standards promulgated by the World Axe Throwing League.

(3) However, none of the premises mentioned in this Section shall be exempt from the provision of this Section if persons under the age of 21 are allowed to enter or remain on the premises while a dance is occurring on the premises.

(e) *Additional exemptions* . Further, this Section shall not apply to and shall exempt from its provisions the following premises:

- (1) Four Oaks Complex, the Memorial Auditorium, Lincoln Center, Schlanger Community Center, and the Senior Center at 3003 North Joplin Street;
- (2) Premises which are furnished to or occupied by any state officer or employee as a residence;
- (3) A private dining room of a hotel or motel, if the dining room is rented or made available on a special occasion only to an individual or organization for a private party and if no sale of alcoholic liquor takes place;
- (4) Lincoln Park during the Fourth of July celebration if cereal malt beverage is sold by a licensee or permit holder who has received permission from the Governing Body to transfer such license or permit for the particular occasion; and

(f) *Additional qualified exemptions.* This Section shall also not apply to and shall exempt from its provisions the following premises only between the hours of 11:00 a.m. and 9:00 p.m.:

- (1) Premises used primarily as a pool hall; and

- (2) A restaurant which derives less than 60 percent of its gross revenues from the bona fide sale of food for consumption on the premises.

(g) *Underage employees and vendors allowed.* Notwithstanding any provisions of this Section, it shall not be a violation of this Section for an employee of a licensee or permit holder who is at least 18 years of age to enter or remain on the premises, provided that the employee is under the on-premises supervision of the licensee or permit holder or an employee who is 21 years of age or older; or for an employee of a vendor to enter for the purpose of providing goods and services to the licensee or permit holder and remain only so long as to provide such goods and services.

(h) *Violations; penalty.* Violation of this Section is a misdemeanor punishable by a fine of not less than \$100.00 and not more than \$250.00 or imprisonment not exceeding 30 days, or both.

Section 3. Article V and Sections 6-198 through 6-215 in Chapter 6 of the Pittsburg

City Code are hereby created as follows:

## **ARTICLE V. ENHANCED CEREAL MALT BEVERAGES**

## **DIVISION 1.-GENERALLY**

### **Sec. 6-198.-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.

## **DIVISION 2.-LICENSE**

### **Sec. 6-199.-License Issued by City.**

The "Cereal Malt Beverage License" issued by the City of Pittsburg pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage by those retailers in compliance with this ordinance and other laws and regulations that may apply.

### **Sec. 6-200.-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.

### **Sec. 6-201.-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.

(g) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he or she has inspected the premises to be licensed.

The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the city for investigation of the applicant. 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 clerk 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.

#### **Sec. 6-202.-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 police department, to the fire department, and to the city-county health department, when they are received. The police department will run a record check on all applicants and the fire department and health department will inspect the premises. 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.

#### **Sec. 6-203.-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.

#### **Sec. 6-204.-License to be posted.**

Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

#### **Sec. 6-205.-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 Crawford 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.

### **DIVISION 3.-OPERATIONAL RESTRICTIONS**

#### **Sec. 6-206.-Restriction upon location.**



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.

**Sec. 6-207.-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-an amount established by ordinance per calendar year.

(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-an amount established by ordinance per calendar year.

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.

**Sec. 6-208.-Suspension of license.**

The chief of police, upon five (5) 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.

**Sec. 6-209.-License Suspension/Revocation 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;
- (l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

#### **Sec. 6-210.-Same; Appeal.**

The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Crawford 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.

#### **Sec. 6-211.-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 as established by ordinance. 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.

#### **Sec. 6-212.-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.

#### **Sec. 6-213.-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 12:30 a.m., and 6:00 a.m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30 percent of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614 and amendments thereto.

(c) Except as provided by subsection (d), no enhanced cereal malt beverages may be sold or dispensed; (1) Between the hours of 12:00 midnight and 6:00 a.m.; (2) in the original package before 12:00 noon or after 8:00 p.m. on Sunday; (3) on Easter Sunday; or (4) for consumption on the licensed premises on Sunday, except in a place of business which is licensed to sell enhanced cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises.

(d) Enhanced cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2601, et seq. and amendments thereto, and licensed as a club by the State Director of Alcoholic Beverage Control.

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of enhanced cereal malt beverage to any person under 21 years of age.

(i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued.

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee or agent or employee of the licensee shall employ any person under 18 years of age in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

#### **Sec. 6-214.-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.

#### **Sec. 6-215.-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 4. This Ordinance shall take effect upon its passage and publication in the official city newspaper, and shall take effect and be in force from and after April 1, 2019.

PASSED AND APPROVED this 26<sup>th</sup> day of March, 2019.

  
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Mayor-Patrick O'Bryan

ATTEST:

  
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Tammy Nagel - City Clerk

