

(First Published in the Lincoln Sentinel-Republican, October 21, 2021)

ORDINANCE NUMBER 735

AN ORDINANCE AMENDING CHAPTER 3, SECTIONS 3-101, 3-213, AND 3-304 OF THE CITY CODE OF THE CITY OF LINCOLN CENTER, KANSAS TO INCORPORATE STATE LAW CHANGES PERTAINING TO THE SALE OF CEREAL MALT BEVERAGES, ENHANCED CEREAL MALT BEVERAGES, AND ALCOHOLIC LIQUOR IN ITS ORIGINAL PACKAGING SOLD AT RETAIL, AND EXPANDING THE PERMISSIBLE HOURS AND DAYS FOR SALE OF THE SAME.

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

SECTION ONE. Section 3-101 of the City Code of the City of Lincoln Center, Kansas is hereby amended to read as follows:

3-101. Definitions. For the purposes of this article, the following words and phrases shall mean:

(a) *Alcohol* means the product of distillation of any fermented liquor, 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) *Beer* 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.

(d) *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.

(e) *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. 41-2701 and amendments thereto, and such term shall include beer, as defined by K.S.A. 41-102, containing not more than six percent alcohol by volume when such beer is sold by a retailer licensed under the Kansas Cereal Malt Beverage Act and the provisions of this chapter.

(f) *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.

(g) *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.

(h) *Club* means a Class A or Class B Club.

(i) *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 this act or cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2702, and amendments thereto.

(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) *Manufacture* means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, or with beer regardless of its alcoholic content and includes blending.

(n) *Manufacturer* means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors as above defined or beer regardless of its alcoholic content.

(o) *Microbrewery* means a brewery licensed by the director of alcoholic beverage control of the department of revenue to manufacture, store and sell domestic beer.

(p) *Microbrewery packaging and warehousing facility* means a microbrewery licensed to perform those functions authorized under K.S.A. 41-308b(b).

(q) *Minor* means any person under twenty-one (21) years of age.

(r) *Nonbeverage user* means every manufacturer of any of the products set forth and described in K.S.A. 41-501, when the same contains alcohol or wine, and all laboratories using alcohol for nonbeverage purposes.

(s) *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 to convey any alcoholic liquor.

(t) *Person* means any natural person, firms, partnerships, corporations, trusts, or associations.

(u) *Place of Business* means any place at which cereal malt beverages or alcoholic beverages, or both, are sold.

(v) *Retailer* means a person who is licensed under the Kansas liquor control act and sells at retail, or offers for sale at retail, alcoholic liquors or cereal malt beverages. Retailer does not include a microbrewery, microdistillery, or a farm winery.

(w) *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 principal, proprietor, agent, servant or employee.

(x) *Sell at retail* and *sale at retail* refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishment, a licensed caterers or a holders of a temporary permit. "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 permit.

(y) *Special event* means a picnic, bazaar, festival or other similar community gathering, which has been approved by the governing body.

(z) *Special event temporary permit* is a permit issued pursuant to K.S.A. 41-2645(e) that allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on public streets, alleys, roads, sidewalks or highways for a special event approved by the governing body by ordinance.

(aa) *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.

(bb) *To sell* includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

(cc) *Wine* means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries, or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

State Law Reference – Similar definitions, K.S.A. 41-102.

SECTION TWO. Section 3-213 of the City Code of the City of Lincoln Center, Kansas is hereby amended to read as follows:

3-213. Business Regulations.

It shall be the duty of every person and/or licensee to observe the following regulations:

(a) The license issued by the city shall be posted in a conspicuous place in the place of business for which the license is issued.

(b) The person and/or the place of business licensed and operating under this article shall have front and rear exits unlocked during all times while open for business.

(c) The premises and all equipment used in connection with such place of business shall be kept clean and in a sanitary condition and shall at all times be open to inspection by public safety and health officers of the city, county, and state.

(d) Except as provided by subsection (e):

(1) No cereal malt beverages or beer containing not more than 6% alcohol by volume may be sold in the original package at retail between the hours of 12:00 midnight and 6:00 a.m., Monday through Saturday; or (2) before 9:00 a.m. or after 8:00 p.m. on Sunday; or (3) on Easter Sunday.

(2) No cereal malt beverages may be sold or dispensed for consumption on the premises between the hours of 12:00 midnight 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 thirty percent (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

(e) 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. 41-2701 *et seq.*, and licensed as a club by the State of Kansas.

(f) The place of business shall be open to the public at all times during business hours, except premises licensed as a club under a license issued by the State of Kansas.

(g) No licensee, agent, or employee of the licensee shall 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 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 adjudged guilty of a felony.

SECTION THREE. Section 3-304 of the City Code of the City of Lincoln Center, Kansas is hereby amended to read as follows:

3-304. HOURS OF SALE. No person and/or licensee shall sell at retail any alcoholic liquor:

(a) before 9:00 a.m. or after 11:00 p.m. Monday through Saturday;

(b) before 9:00 a.m. or after 8:00 p.m. on Sunday; or

(c) on Easter Sunday, Thanksgiving Day, or Christmas Day;

(d) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age.

SECTION FOUR. Existing Sections 3-101, 3-213, and 3-304 are hereby repealed.

SECTION FIVE. This ordinance shall be published at least once each week for two (2) consecutive weeks in the official city newspaper and shall become effective after sixty (60) days following the date of its final publication, unless a sufficient petition is filed with the county election officer, all in accordance with K.S.A. § 41-2911.

INTRODUCED, PASSED, and APPROVED by the Governing Body of the City of Lincoln Center, Kansas, on this 11th day of October, 2021.

APPROVED:

By: Travis Schwerdtfager
Mayor

Attest: (seal)

By: Heather N. Hillegeist
City Clerk