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ORDINANCE NO. 50-666

AN ORDINANCE AMENDING SECTIONS 4.04.010, 4.04.040, AND 4.04.045, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO GENERAL PROVISIONS AND PROHIBITED ACTS INVOLVING INTOXICATING LIQUOR AND REPEALING THE ORIGINALS OF SAID SECTIONS.

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

SECTION 1. Section 4.04.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this title, have the meanings indicated in this section. Any term used in this title that is not defined herein shall have the same meaning and definition as set forth in K.S.A. Chapter 41 and amendments thereto.

- (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) *'Barrier'* means any natural or manmade obstruction which precludes direct traffic, between a church or school and a private club, drinking establishment or a place of business at which cereal malt beverages are sold and is of such a character that it completely separates such establishments, including parking facilities. Barriers include, but are not limited to, rivers, railroad tracks, levees, and drainage ditches.
- (d) *'Beer'* modified, or limited by other words, 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.
- (e) *'Beneficial interest'* shall not include any interest a person may have as owner, operator, lessee or franchise holder of any licensed hotel or motel on the premises of which a club or drinking establishment is located.
- (f) *'Bus'* means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

- (g) *'Caterer'* means an individual, partnership or corporation which sells alcoholic liquor by the individual drink or domestic beer, 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.
- (h) *'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, but does not include any such liquor which is more than 3.2% alcohol by weight.
- (i) *'Cereal malt beverage retailer'* means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.
- (j) *'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 director, for the exclusive use of the corporation stockholders, partners, trust beneficiaries or associates (hereinafter referred to as "members"), and their families and guests accompanying them.
- (k) *'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.

- (l) *'Club'* means a Class A or Class B club.
- (m) *'Common Consumption area'* means a defined indoor or outdoor area which is not otherwise licensed by the Kansas Liquor Control Act or the Club and Drinking Establishment Act where the possession and consumption of alcoholic liquor is allowed pursuant to a common consumption area permit.
- (n) *'Crime of moral turpitude'* means a crime involving dishonesty.
- (o) *'Director'* means the Director of Alcoholic Beverage Control of the Kansas State Department of Revenue.
- (p) *'Distributor'* shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.
- (q) *'Domestic beer'* means beer which contains not more than percent 10% alcohol by weight and which is manufactured in this state.
- (r) *'Drinking establishment'* means premises which may be open to the general public over 21 years of age, where alcoholic liquor by the individual drink is sold.
- (s) *'Drinking establishment/restaurant'* means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold and which derive not less than 30% of its gross revenues from sales of food and beverages for consumption on such premises in a two month period. Failure on the part of the licensee to meet the 30% food sales criteria, or conviction of the licensee or any owner, officer, or employee of the licensee of any two violations of Section 4.16.130 of the City Code

occurring on the licensed premises within one year shall result in the premises being reclassified as a drinking establishment as provided in Section 4.16.095(c) and any amendments thereto.

- (t) *'Employee'* means any person employed by a licensee in the business of selling cereal malt beverages or alcoholic liquor.
- (u) *'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.
- (v) *'Gross revenues'* means only that income derived from cereal malt beverages, alcoholic liquor, and other food consumables.
- (w) *'Guest or Guests'* means a person or persons to whom a private or personal invitation, as opposed to a public announcement, has been extended for hospitality or entertainment. Paying customers or patrons of any kind of business establishment are not "guests" as the term is used in Section 4.04.040(d) of this code.
- (x) *'Hotel'* has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.
- (y) *'Individual drink'* means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term "individual drink" includes beverages containing not more than: (1) Eight ounces of wine; (2) 32 ounces of beer

or cereal malt beverage; or (3) four ounces of a single spirit or a combination of spirits.

- (z) *'Legal age for consumption of cereal malt beverage'* means 21 years of age, except that *'legal age for consumption of cereal malt beverage'* shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.
- (aa) *'Licensee'* means any person to whom a current license, temporary permit or special event retailer's permit has been issued pursuant to this chapter authorizing sale of cereal malt beverage and/or alcoholic liquor. This term shall also mean any person to whom a current license or temporary permit has been issued by the Director of Alcoholic Beverage Control pursuant to the Liquor Control Act or the Club and Drinking Establishment Act of the state of Kansas."
- (bb) *'Manager'* means the manager or assistant manager, or both, of any establishment licensed under this Title who is in charge of the daily operations of the establishment. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.
- (cc) *'Manufacture'* means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

- (dd) *'Manufacturer'* shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.
- (ee) *'Minor'* means any person under 21 years of age.
- (ff) *'Morals charge'* means a charge involving the sale of sexual relations, buying sexual relations, human trafficking, any crime defined in article 55 of chapter 21 of the Kansas Statutes Annotated and amendments thereto; violation of K.S.A. 21-5604 and amendments thereto; gambling; bigamy; any violation of Chapter 5.26 of the Code of the City of Wichita and amendments thereto; or any crime defined in article 57 of chapter 21 of the Kansas Statutes Annotated and amendments thereto.
- (gg) *'Off-premises business'* means a business establishment which sells cereal malt beverages or alcoholic liquor in original unopened containers for consumption off of the licensed premises.
- (hh) *'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 or cereal malt beverage to contain and to convey any alcoholic liquor or cereal malt beverage. Original container does not include a sleeve.
- (ii) *'Person'* means any natural person, corporation, partnership, trust or association. As used in Chapter 4.12, *'Person'* means any individual, firm, partnership, corporation or association.
- (jj) *'Place of business'* means any place, except a tavern, at which cereal malt beverages and/or alcoholic liquor are sold.

- (kk) *'Powdered alcohol'* means alcohol that is prepared in a powdered or crystal form for either direct use or for reconstitution in a nonalcoholic liquid.
- (ll) *'Premises'* means the specific area described in the license or permit application and approved as the location upon which the cereal malt beverages and/or alcoholic liquor may be sold and/or consumed under the license or permit.
- (mm) *'Public assembly area'* means the area of the licensed premises to which the general public has access for purposes including, but not limited to, food and drink consumption, entertainment, recreation, social functions or awaiting transportation.
- (nn) *'Retailer'* means a person who sells at retail, or offers for sale at retail, alcoholic liquors, and does not include a microbrewery, microdistillery or a farm winery, as those terms are defined in K.S.A. 41-102 and amendments thereto. Retailer also means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.
- (oo) *'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.
- (pp) *'Sample'* means a serving of alcoholic liquor which contains not more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or (3) two ounces of beer or cereal malt beverage. A sample of a mixed

alcoholic beverage shall contain no more than one-half ounce of distilled spirits.

- (qq) *'School'* means the use of a site for instructional purposes on an elementary or secondary level, including both public schools as well as private schools that have curriculums similar to those in public schools.
- (rr) (1) *'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 establishments, licensed caterers or holders of temporary permits.
- (2) *'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.
- (ss) *'Special event'* means a picnic, bazaar, fair, festival or similar gatherings or events which have been issued a Community Event permit pursuant to Chapter 3.11 of the Code of the City of Wichita, where a temporary permit for the sale of cereal malt beverages or alcoholic liquor is issued pursuant to regulations established by this title, and the Kansas Club and Drinking Establishment Act and amendments thereto.
- (tt) *'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.

- (uu) *'Tavern'* means any business establishment licensed to sell cereal malt beverages for consumption on the premises that derives in any one month of the calendar year less than 50% of its gross revenues from the sale of food for consumption on the premises.
- (vv) *'Temporary permit'* shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.
- (ww) *'To sell'* includes to solicit or receive an order for, to keep or expose for sale and keep with intent to sell.
- (xx) *'Vehicle'* means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except electric personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks.
- (yy) *'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.
- (zz) *'Wholesaler'* means a distributor as defined by K.S.A. 41-2701 and amendments thereto.”

SECTION 2. Section 4.04.040 of the code of the City of Wichita, Kansas is hereby amended to read as follows:

“Consumption and possession of alcoholic liquor and cereal malt beverages in public places prohibited – exceptions.

(A) It is unlawful for any person within the corporate limits of the city to consume or to have in such person's possession any open container of alcoholic beverage upon the public streets, alleys, roads, sidewalks or highways, or inside vehicles while upon the public streets, alleys, roads or highways except as follows:

(1) Alcoholic liquor may be sold and/or consumed at a special event or catered event held on public streets, alleys, roads, sidewalks or highways, provided that:

(a) such streets, alleys, roads, sidewalks or highways have been closed to motor vehicle traffic by the City Council, and

(b) when a temporary permit for such event has been issued pursuant to K.S.A. 41-2645 and Section 4.16.154 of this Code and amendments thereto, or when the caterer's licensee has provided the required notification pursuant to K.S.A. 41-2643 and amendments thereto, and

(c) the consumption of alcoholic liquor at such event has been approved by the City Council pursuant to Section 3.11.065 and amendment thereto.

(2) Alcoholic liquor may be consumed in an area designated as a common consumption area that includes public streets, alleys, roads, sidewalks or highways, provided that:

a) such streets, alleys, roads, sidewalks or highways have been closed to motor vehicle traffic by the City Council, and

- b) when a common consumption area permit has been issued pursuant to Section 4.08.030 and amendments thereto.
- (3) Cereal malt beverage may be possessed and/or consumed on any city street closed for a community event licensed pursuant to Chapter 3.11 of this Code where a written request for such consumption and possession and the community event are approved by the City Council.
- (4) No alcoholic beverage may be consumed inside or on motor vehicles while on public streets, alleys, roads or highways at a special event, a catered event or within a common consumption area.
- (5) No person shall remove any alcoholic beverage from inside the boundaries of a special event or a catered event as designated and/or approved by the City Council pursuant to Section 3.11.065 and amendments thereto, or from within an area designated as a common consumption area pursuant to Section 4.08.030 and amendments thereto. The boundaries of a special event, catered event, or common consumption area shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic beverages may be possessed or consumed at such special event or catered event or within such common consumption area.
- (6) No person shall possess or consume alcoholic beverage or cereal malt beverage inside the premises licensed as a special event, the premises of a catered event or within an area designated as a common consumption area that was not sold or provided by the licensee holding either the special event retailers permit or the temporary permit for such special event, the licensed

caterer catering the event, or by an adjacent drinking establishment which has extended its licensed premises into and made a part of the licensed premises for such special event pursuant to K.S.A. 41-2645(e)(2) and Section 4.16.070 of this Code and amendments thereto, or is participating in a common consumption area pursuant to Section 4.08.030 and amendments thereto.

- (7) It shall be unlawful for any person to distribute, sell or allow the consumption of any alcoholic beverage on the streets or sidewalks within any special event, a catered event, or common consumption area without obtaining the approval of the City Council and any and all necessary state and local permits for the sale or consumption of such alcoholic beverages.
- (8) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.
- (9) Any community event which is licensed to allow the sale, possession and/or consumption of alcoholic liquor and/or cereal malt beverage shall comply with the provisions of Section 3.11.065 of this Code and amendments thereto regarding the possession, consumption or sale of such alcoholic liquor and/or cereal malt beverage.
- (10) A person may possess alcoholic liquor upon the public streets, alleys, roads or highways, or inside vehicles while upon the public streets, alleys, roads or highways when transporting a container of alcoholic liquor from a

licensed premises that is securely resealed as allowed by Section 4.16.155(c) of this Code and amendments thereto.

- (a) As used in this section, “alcoholic beverage” means any alcoholic liquor, as defined by Section 4.04.010(b) of this Code and any amendments thereto, and/or any cereal malt beverage as defined by Section 4.04.010(h) of this Code and any amendments thereto.
- (b) As used in this section, alcoholic beverage will be considered to be in an open container unless in the original and unopened container, or securely resealed as required by Section 4.16.155(c) of this Code and amendments thereto.
- (c) No person shall consume alcoholic liquor on private property except:
 - (1) On premises where the sale of liquor by the individual drink is authorized by this title and by the Club and Drinking Establishment Act of the State of Kansas;
 - (2) Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto, takes place;

- (3) In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of such alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto take place;
- (4) In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto takes place;
- (5) On the premises of an unlicensed business as authorized by K.S.A. 2105 Supp. 41-719(i) and amendment thereto;
- (6) On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by K.S.A. 41-305, 41-308a, 41-308b or K.S.A. 41-354, and amendments thereto;
- (7) Any person or entity who is licensed to sell alcoholic liquor in the original package at retail may conduct wine, beer and distilled spirit tastings on the licensed premises or adjacent premises, monitored and regulated by the Division of Alcoholic Beverage Control as set forth in K.S.A. 41-308d

and Section 4.05.100 of this Code and amendments thereto;
and

(8) On premises designated as a common consumption area by the City Council pursuant to Section 4.08.030 and which have a valid common consumption area permit issued by the Director of the Division of Alcoholic Beverage Control.

(d) No person shall consume or to have in such person's possession any open container of alcoholic liquor on public property except:

(1) On real property *leased* by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes incidental thereto.

(2) In any state-owned or operated building or structure and on the surrounding premises, which is furnished to and occupied by any state officer or employee as residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by the Wichita Airport Authority.

(4) On property which has been specifically exempted by ordinance the title of which is vested in the City of Wichita.

(5) On premises designated as a common consumption area by the City Council pursuant to Section 4.08.030 and amendments thereto, and which have a valid common

consumption area permit issued by the Director of the
Division of Alcoholic Beverage Control.

- (e) Any property located within the corporate limits of the City of Wichita that is under the control of the Kansas State Board of Regents and the Kansas State Board of Regents has exempted said property from the provisions of K.S.A. 41-719(c) and amendments thereto and said property is not used for classroom instruction.
- (f) On the premises of any Kansas national guard regional training center or armory, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.
- (g) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 nor more than \$200 or by imprisonment for not more than six months, or both.”

SECTION 3. Section 4.04.045 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

“Exemptions.

(A) The city, by virtue of the authority contained in K.S.A. 41-719 and amendments thereto, exempts the following properties from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719 and amendments thereto, and in Section 4.04.040 of this Code and amendments thereto: CityArts, the education building of the Wichita Area Treatment Education and Remediation (WATER) Center, Sports Hall of Fame, Advanced Learning Library and

grounds, Westlink, Evergreen, Ford Rockwell and Lionel Alford Regional Branch Libraries and grounds, Wichita-Sedgwick County Historical Museum, Century II, the Wichita Dwight D. Eisenhower National Airport, Colonel James Jabara Airport, Cowtown, the Wichita Art Museum building and grounds, Mid-America All-Indian Center building and grounds, Lawrence-Dumont Stadium and parking lot, the Central Branch Wichita Public Library, the Kansas Aviation Museum (Historic Wichita Municipal Airport), Botanica -- the Wichita Gardens all buildings and grounds, the Hyatt Regency Wichita Hotel and Conference Center, Exploration Place building and grounds, the Ice Sports Center of Wichita building and grounds, the Wichita Boathouse building and grounds, the La Familia Senior Community Center, Inc. located at 841 W. 21st St. North building and grounds, and the First Tee Building and outdoor patio to be located at 1034 N. Roosevelt.

(B) The city, by virtue of the authority contained in K.S.A. 41-719 and amendments thereto, exempts the following properties from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719 and amendments thereto, and in Section 4.04.060 of this Code and amendments thereto: the Old Town Farm and Art Market, Nomar International Market, the Old Town Cinema Plaza, A. Price Woodard Park, Naftzger Park, Finlay Ross Park, Heritage Square Park, the vacant property located at 642 N. Seneca as described in a lease approved by the Wichita City Council on June 19, 2007 between the City of Wichita and the Kansas African American Museum, Inc., the Chester I. Lewis Reflection Square Park, any open public property that is owned by the City of Wichita and is located within the area bounded on the north by the south curb line of Douglas Avenue from the west curb line

of Washington Avenue to the east bank of the Arkansas River, thence south to a line designated by the north edge of the Kellogg Flyover, thence east to the west curb line of Washington Avenue and thence north to the south curb line of Douglas Avenue to the point of origin, and the Douglas River Corridor Open Space which shall include the public property along the east bank of the Arkansas River extending north for 510 feet from a line designated by the north edge of the Douglas Avenue Bridge and abutting the Drury Plaza Hotel Broadview property line on the east and encompassing the Douglas River Corridor Gazebo and the paved walkway immediately to the north thereof.

Provided, however, unless such property is subject to a lease agreement approved by the Wichita City Council or the Board of Park Commissioners, the properties referred to in this subsection shall be considered exempted only under the following circumstances:

- (1) When either a community event, temporary entertainment district or common consumption area has been approved by the City Council;
- (2) If an activity does not require a community event permit, when the written consent of the City Manager or the Manager's designee has been obtained, or if park property when the written consent of the Director of Park and Recreation or the Director's designee has been obtained;
- (3) When a license for the sale of alcohol has been issued if such license is necessary, or when licensed caterer has provided the required notification for the premises pursuant to K.S.A. 41-2643 and amendments thereto;
and
- (4) Any property subject to a lease agreement as set forth above shall be considered exempt at any time and the conditions upon which

consumption of alcoholic liquor is allowed shall be subject to the control of the applicable lessee.”

SECTION 4. The original of Sections 4.04.010, 4.04.040 and 4.04.045 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 23rd day of January , 2018.

Jeff Longwell, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer L. Magaña
City Attorney and Director of Law