

ORDINANCE NO. 19-09

**AN ORDINANCE PERTAINING TO REGULATION OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGE; DEFINITIONS; SIDEWALK PREMISES PERMITS FOR DRINKING ESTABLISHMENTS; ADDING SECTION 7.06.060 TO THE OLATHE MUNICIPAL CODE; AMENDING OLATHE MUNICIPAL CODE SECTIONS 7.02.010 AND 7.02.040 AND REPEALING THE EXISTING SECTIONS.**

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

**SECTION ONE:** Section 7.02.010 of the Olathe Municipal Code is hereby amended to read as follows:

**“7.02.010 Definitions.**

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

“Alcoholic candy” means: (1) for purposes of manufacturing, any candy or other confectionery product with an alcohol content greater than one-half percent (0.5%) alcohol by volume; and (2) for purposes of sale at retail, any candy or other confectionery product with an alcohol content greater than one percent (1%) alcohol by volume.

“Alcoholic liquor” means alcohol, spirits, wine, beer, alcoholic candy, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, capable of being consumed by a human being, but shall not include cereal malt beverage.

“Caterer” means an individual, partnership or corporation licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated which sells alcoholic liquor by the individual drink, and provides services relating 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.

“Cereal malt beverage” means 1) any fermented but undistilled liquor brewed or made from malt or from a mixture of malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight or 2) beer containing not more than six percent (6%) alcohol by volume when such beer is sold by a retailer licensed under the Kansas cereal malt beverage act. The effective date of this definition is April 1, 2019.

“Class A club” means a premises licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and 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 of Alcohol Beverage Control of the Kansas

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Department of Revenue, 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.

“Class B club” means a premises licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and which is operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverage and for entertainment.

“Club” means a Class A or Class B club.

“Club and Drinking Establishment Act” means the provisions of Article 26 of Chapter 41 of the Kansas Statutes Annotated and any amendments thereto.

“Drinking establishment” means premises licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and which may be open to the general public, where alcoholic liquor by the individual drink is sold.

“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 (8) ounces of wine; (2) thirty-two (32) ounces of beer or cereal malt beverage; or (3) four (4) ounces of a single spirit or a combination of spirits.

“Legal age of consumption of cereal malt beverages” means twenty-one (21) years of age; except that “legal age of consumption of cereal malt beverages” shall mean eighteen (18) years of age if at any time the provisions of PL98-363 penalizing states for permitting persons under twenty-one (21) years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

“Licensee” is any person who applies for and receives a license which allows the licensee to sell alcoholic liquor or cereal malt beverages.

“Person” includes any natural person, corporation, partnership or association.

“Place of business” means any place at which alcoholic liquor or cereal malt beverages are sold.

“Powdered alcohol” means alcohol that is prepared in a powdered or crystal form for either direct use or for reconstitution in a nonalcoholic liquid.

“Premises” means the specific area described in the license 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.

“Public venue” means an arena, stadium, hall or theater, used primarily for athletic or sporting events, live concerts, live theatrical productions or similar seasonal entertainment events, not operated on a daily basis, and containing:

- (1) Not less than four thousand (4,000) permanent seats; and
- (2) Not less than two (2) private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier.

“Retailer” means a person who sells, or offers for sale, alcoholic liquors or cereal malt beverages for use and consumption and not for resale in any form.

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“Sale” means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and ~~included~~ includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee.

“Sample” means a serving of alcoholic liquor which contains not more than: (1) One-half (1/2) ounce of distilled spirits; (2) one (1) ounce of wine; or (3) two (2) ounces of beer or cereal malt beverage. A sample of a mixed alcoholic beverage shall contain not more than one-half (1/2) ounce of distilled spirits.

“School” means any institution of learning, whether public or private. This definition includes, but is not limited to, a nursery school, kindergarten, elementary school, junior high school, senior high school, college and university. However, for the purposes of this Title, any institution of learning whether public or private located within a typically enclosed mall with a climate-controlled walkway between two (2) facing strips of stores will not be considered a school.

“Temporary permit” means a temporary permit issued pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated.

“To sell” includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.”

**SECTION TWO:** Section 7.02.040 of the Olathe Municipal Code is hereby amended to read as follows:

### **“7.02.040 Consumption on Public Property.**

(A) No person shall possess or consume alcoholic liquor or cereal malt beverages on any public lands to which the City holds title ~~without a~~ unless one of the permits ~~issued pursuant to described in~~ is issued for such land.

(B) ~~Except as provided in subsection (C) of this section, an application for The City Manager or Designee may issue~~ a permit to sell, serve, possess or consume alcoholic liquor or cereal malt beverages on public lands in designated places and for limited times, as described in the permit. Applications for such permits must include either:

(1) A valid caterer’s license, pursuant to Chapter 7.10; or

(2) A valid temporary permit, pursuant to Chapter 7.12.

(C) The City Manager or Designee may issue the following special permits:

(1) ~~The City Manager or designee may issue~~ A consumption permit for City-sponsored events on public lands where no alcoholic liquor or cereal malt beverages will be sold or served, but may be possessed or consumed; or

(2) A Sidewalk Premises permit pursuant to Section 7.06.060 to Drinking Establishments for licensed premises extensions onto City sidewalks or public right-of-way.

(D) Permits issued pursuant to this section must state the boundaries of the permitted area and the period that the permit is valid. The approval, denial,

or revocation of such permits is at the sole discretion of the City. The permit may include any conditions or restrictions the City deems necessary for the public health, safety, and welfare, and to protect and preserve public lands.

(E) As a condition of the permit, the applicant will agree to follow all applicable laws regarding consuming of alcohol, including, but not limited to, Kansas Statutes Annotated, Chapter 41, and Titles 7 and 9 of this municipal code, and any rules and regulations promulgated thereunder. The applicant will also agree to follow all lawful orders of the division of alcoholic beverage control of the Kansas Department of Revenue and the Olathe Police Department.

(F) The City Manager or designee may issue rules and regulations to implement the provisions of this Section.”

**NEW SECTION THREE:** Section 7.06.060 is hereby added to the Olathe Municipal Code to read as follows:

**“7.06.060 Sidewalk Premises Permit.**

(A) It shall be unlawful for any person to sell or serve any alcoholic liquor on a City sidewalk or public right-of-way without a valid Sidewalk Premises permit issued pursuant to this section. “Sidewalk Premises” means an area of a City sidewalk or public right-of-way, which is immediately adjacent to a Drinking Establishment.

(B) The applicant must be the license holder of the Drinking Establishment immediately adjacent to the Sidewalk Premises. Application for a Sidewalk Premises Permit must be made to the City Clerk on a form provided by the City Clerk for that purpose. The applicant must provide the following:

(1) The name of the Drinking Establishment, including the business address, business telephone, and mailing address.

(2) The name, telephone number, mailing address, and e-mail address of the manager of the Drinking Establishment.

(3) For applications to use an area of City sidewalk, a depiction of the licensed area that includes the following:

(a) A drawing or diagram showing the location of railings or barriers that separate the Sidewalk Premises from the portion of the sidewalk for pedestrian use; and

(b) A drawing or diagram showing there is a minimum of thirty-six (36) inches width of unobstructed sidewalk reserved for pedestrian use between proposed Sidewalk Premises and the street curb.

(C) Permits applied for, or issued under this section may be approved, denied, or revoked at the sole discretion of the City. Any of the following events may result in revocation:

(1) Fraud, misrepresentation, or any false statement contained in the application for a Sidewalk Premises permit, or required materials therein; or

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(2) Failure to comply with any requirements of this Title.

(D) The Sidewalk Premises permit holder must comply with the following regulations:

(1) The Sidewalk Premises and adjoining sidewalk areas must be kept clear of dishes, cups, glasses, litter, food scraps, or any other waste. The entire Sidewalk Premises area and adjacent sidewalks must be cleaned daily.

(2) The Sidewalk Premises must be continuously supervised by employees of the establishment during business hours.

(3) The Sidewalk Premises area must be designated with a railing or barrier. Such railing or barrier must be at least thirty-six (36) inches high.

(4) The City may require modifications of the Sidewalk Premises area, to increase safety, improve passage, prevent damage to the City's sidewalk or right-of-way, or maintain a style consistent with the surrounding area.

(5) Maintain all required licenses relating to alcoholic liquor.

(E) Establishments with a valid Sidewalk Premises permit may sell and serve alcoholic liquor, and patrons of the establishment may purchase, possess, and consume such alcoholic liquor within establishment's permitted Sidewalk Premises in accordance with Title 7 of the Olathe Municipal Code. Establishments must also comply with all State and City laws and ordinances governing the sale, possession, and consumption of alcoholic liquor."

**SECTION FOUR:** Existing Sections 7.02.010 and 7.02.040 are hereby repealed.

**SECTION FIVE:** This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

**PASSED** by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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(SEAL)

APPROVED AS TO FORM:

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City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.