

ORDINANCE NO. 2604

AN ORDINANCE REGULATING THE SALE OF ENHANCED CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF GARDNER, KANSAS.

WHEREAS, the Kansas Legislature during the 2017 legislative session adopted SB 13 providing for amendments to the Kansas Liquor Control Act and the Kansas Cereal Malt Beverage Act, the effective date for which was set for April 1, 2019 following the adoption of rules and regulations by the Director of Alcoholic Beverage Control (“ABC”);

WHEREAS, the City of Gardner deems it appropriate in light of the adoption of SB 13 and the adoption of rules and regulations by the ABC that the City’s Code provisions relating to the regulation of Cereal Malt Beverages be amended as provided for within this Ordinance;

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

SECTION ONE. Gardner Municipal Code (“GMC”) at Title 5, Article 1, Section 5.20.010 shall be amended in its entirety to provide as follows:

“5.20.010 Definitions.

- A. “Alcoholic liquor” means alcohol, spirits, wine or 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.
- B. “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.
- C. “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.
- D. “Class A club” means premises owned or leased by a corporation, partnership, business trust or association 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.
- E. “Class B club” means 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.
- F. “Club” means a Class A or Class B club.
- G. “Drinking establishment” means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

- H. "Temporary permit" means a permit, issued in accordance with the laws of the State of Kansas, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public."

SECTION TWO. Gardner Municipal Code ("GMC") at Title 5, Article 7, shall be amended in its entirety to provide as follows:

"Article VII. Enhanced Cereal Malt Beverages

5.20.285 License issued by City.

The "Cereal Malt Beverage License" issued by the City pursuant to this Article, authorizes the sale of enhanced cereal malt beverage as defined in Article 1, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

5.20.290 License required of retailers.

- 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.

5.20.300 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/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 not less than 21 years of age and that he/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, 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/she has inspected the premises to be licensed and that the same comply with the health code and/or ordinances of the City;
- G. Each application for a general retailer's license must be accompanied by a certificate from the City Fire Chief certifying that he/she has inspected the premises to be licensed and that the same comply with the fire code and/or ordinances of the City. 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/she is qualified as a licensee under the provisions of this article. 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.

5.20.310 License application procedures.

- A. All applications for a new or renewed enhanced cereal malt beverage license shall be submitted to the City Clerk at least 10 days in advance of the Governing Body meeting at which they will be considered.
- B. The City Clerk shall notify the holder of an existing license 30 days in advance of its expiration.
- C. The City Clerk shall provide copies of all applications to the Police Department, to the Fire Department, and to the County Health Department when they are received. The Police Department shall run a records check on all applicants and the Fire Department and County 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 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.

5.20.320 License Granted; Denied.

- A. The minutes of the Governing Body meeting 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 shall be immediately returned to the person who has made application.

5.20.330 License to be posted.

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

5.20.340 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 Johnson 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:
 - 1. Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or
 - 2. Has been convicted of a violation of the Drinking Establishment Act or the cereal malt beverage laws of this state.
- E. 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.

5.20.350 Restriction upon location.

- A. 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.
- B. It shall be unlawful to sell, dispense or retail any enhanced cereal malt beverage at any place within the City limits that is within a 200-foot radius of any church, school or library.
- C. The provisions of this section shall not apply to any establishment holding a private club license issued by the State of Kansas.
- D. The distance limitation of subsection (B) of this section shall not apply to any establishment holding a cereal malt beverage license issued by the City when the licensee has petitioned for and received a waiver of the distance limitation. The Governing Body shall grant such a waiver only following public notice and hearing.

5.20.360 License fee.

The license fees for general retailer and limited retailer shall be set by the Governing Body by resolution. 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.

5.20.370 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 chapter or other laws pertaining to enhanced cereal malt beverages, which violation does not in his/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.

5.20.380 License suspension/revocation by Governing Body.

The Governing Body, upon five days' written notice to a person holding a license to sell enhanced cereal malt beverages, may permanently revoke or cause to be suspended such license for a period of not more than 30 days 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 article or has become ineligible to obtain a license under this article;
- 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/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 under this article;
- F. For permitting any person to mix drinks with materials purchased in any premises licensed under this article 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 premises licensed under this article;
- 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) of this section shall not apply if such place of business is also currently licensed as a private club.

5.20.390 License suspension/revocation by Governing Body – Appeal.

The licensee, within 20 days after the order of the Governing Body revoking any license, may appeal to the District Court of Johnson County and the District Court shall proceed to hear such appeal as though such Court had original jurisdiction in the matter. Any appeal taken under this section 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/her behalf, for a period of six months thereafter.

5.20.400 Change of location.

If a licensee desires to change the location of his/her place of business, he/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 that shall be set by the Governing Body by resolution. If the application is in proper form and the location is not in a prohibited zone and all the 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.

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

5.20.420 Business regulations.

It shall be the duty of every licensee to observe the following regulations.

- A. The place of business licensed and operating under this article 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. No enhanced cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., 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 percent of its gross receipts from the sale of food for consumption on the licensed premises. 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. 41-701 et seq. and licensed as a club by the state of Kansas; provided, however, no enhanced cereal malt beverages shall be sold or dispensed on Easter Sunday.
- 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 licensed as a club by the State of Kansas.
- 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 of Kansas 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 shall employ any person who has been judged guilty of a felony.
- L. No licensee or agent or employee of the licensee shall employ any person under 18 years of age in dispensing enhanced cereal malt beverages.

5.20.425 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.

5.20.430 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 which shall be 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 or County Health Officer or designee.

5.20.440 Minors on premises.

- A. It shall be unlawful for any person under 21 years of age to remain on any premises where the sale of enhanced cereal malt beverages is licensed for on-premises consumption.
- B. This section shall not apply if the person under 21 years of age is an employee of the licensed establishment, or is accompanied by his/her parent or guardian, or if the licensed establishment derives not more than 50 percent of its gross receipts in each calendar year from the sale of enhanced cereal malt beverages for on-premises consumption.

5.20.450 Penalty.

If the licensee has violated any provisions of this article, the City may suspend and/or revoke such license pursuant to GMC 5.20.370, 5.20.380 and 5.20.390 and the individual holding the license may be charged in Municipal Court with a violation of the alcoholic liquor laws of the City and upon conviction shall be punished by:

- A. A fine of not more than \$499.00; or
- B. Imprisonment in jail for not more than 179 days; or
- C. Both such fine and imprisonment not to exceed subsections (A) and (B) of this section.”

SECTION THREE. All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

SECTION FOUR. This ordinance shall take effect and be in force following its publication in the official newspaper of the City as required by law and from and after April 1, 2019.

PASSED by the Governing Body this 4th day of March, 2019.

APPROVED by the Mayor, this 4th day of March, 2019.

(SEAL)

Attest:

CITY OF GARDNER, KANSAS

/s/

Steve Shute, Mayor

/s/

Amy Nasta, City Clerk

Approved as to form:

/s/

Ryan B. Denk, City Attorney