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ORDINANCE NO. 722

AN ORDINANCE AMENDING AND RESTATING CHAPTER III, BEVERAGES, OF THE GLEN ELDER CITY CODE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GLEN ELDER:

Section 1. Chapter 3, Beverages, of the Glen Elder City Code is here by amended and restated as follows:

ARTICLE I. CEREAL MALT BEVERAGES AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME.

3-101. DEFINITIONS. For the purpose of this article, the following definitions shall apply unless the context clearly requires otherwise:

(a) Cereal malt beverage means any fermented but undistilled liquor brewed or made from malt or a mixture of malt or malt substitute, but shall not include any such liquor which contains more than three and two-tenths percent of alcohol by weight.

(b) Enhanced Cereal Malt Beverage means cereal malt beverage as that term is defined herein, 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.

(c) General retailer means a person who has a license to sell enhanced cereal malt beverages at retail for consumption on the premises of the retailer's place of business.

(d) Limited retailer means a person who has a license to sell enhanced cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

(e) Person means individuals, firms, co-partnerships, corporations, and associations.

(f) Place of business means any place at which enhanced cereal malt beverages are sold.

3-102. HOURS OF SALE. No person shall sell at retail any enhanced cereal malt beverage in the city on the following days and hours:

(a) Between the hours of 12 midnight and 6:00 a.m.;

(b) In the original package before 12 noon or after 8:00 p.m. on Sunday;

(c) On Easter Sunday.

3-103. LICENSE ISSUED BY CITY. The "Cereal Malt Beverage License" issued by the city of Glen Elder pursuant to this article, authorizes the sale of enhanced cereal malt beverage as defined in Section 3-101, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

3-104. 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.

3-105. 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; and

(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.

3-106. LICENSE APPLICATION PROCEDURES.

(a) All applications for a new and renewed enhanced cereal malt beverage licenses 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's office shall notify the applicant of an existing license 30 days in advance of its expiration.

(c) The clerk's office shall run a record check on all applicants.

(d) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance.

3-107. 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.

3-108. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

3-109. 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 Mitchell 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.

3-110. RESTRICTION UPON LOCATION. It shall be unlawful to dispense at retail any enhanced cereal malt beverage within the city limits that is within a 300-foot radius of any church, school, or library. This distance limitation may be waived when the licensee has petitioned for and received a waiver from the governing body. The governing body shall grant such a waiver only following public notice and hearing.

3-111. LICENSE FEE. The license application fee for a General Retailer shall be \$85.00. The license application fee for a Limited Retailer shall be \$85.00. 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.

3-112. SUSPENSION OF LICENSE. The City Code Enforcement Officer or the Mayor's designee, upon five 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.

3-113. LICENSE SUSPENSION/REVOCAION 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.

3-114. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Mitchell 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.

3-115. 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. 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.

3-116. 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.

3-117. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations.

(a) The place of business shall be open to the public and to the police at all times during business hours.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

3-118. PROHIBITED CONDUCT ON PREMISES. No licensee shall permit any immoral conduct in his or her place of business and shall keep and maintain his or her place of business in a clean and sanitary condition.

3-119. PENALTY. It shall be unlawful for any person to do any of the things or acts forbidden in this article. It shall be unlawful for any person to fail or refuse to do any of the things or acts commanded to be done by this article. Any person who shall violate the provisions of this section shall upon conviction of any such violation be subject to a fine not to exceed \$500 or by imprisonment not to exceed six months or by both fine and imprisonment.

ARTICLE II. ALCOHOLIC LIQUOR.

3-201. DEFINITIONS. For the purpose of this article, the following definitions shall apply unless the context clearly requires otherwise:

(a) Alcoholic beverage or alcoholic liquor as used in this article includes the varieties of liquor as defined in K.S.A. 41-102, namely alcohol, alcoholic liquor, spirits, wine and beer and every liquid or solid, patented or not, containing alcohol, alcoholic liquor, spirits, wine or beer, and capable of being consumed as a beverage by a human being, but does not include any beer or cereal malt beverage containing not more than three and two-tenths percent of alcohol by weight.

3-202. STATE LICENSE REQUIRED.

(a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the "Kansas liquor control act" without first having obtained a state license to do so as required by the act to sell the same.

(b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupation tax levied in section 3-203 and the tax shall be received and a receipt shall be issued for the period covered by the state license.

3-203. OCCUPATION TAX.

(a) There shall be levied a biennial occupation tax on each licensed retailer of alcoholic liquor, for consumption off the premises, in the amount of \$600. The tax shall be paid before

business is begun under an original state license and within two days after any renewal of a state license.

(b) A holder of a state-issued license for the retail sale of alcoholic liquors shall present such license when applying to pay the occupation tax levied in subsection (a) and the tax shall be received and a receipt issued for the period covered by the state license by the city clerk.

(c) Every licensee shall cause the city alcoholic liquor retailer's occupation tax receipt to be placed in plain view next to or below the state license and in a conspicuous place on the licensed premises.

3-204. HOURS OF SALE. No person shall sell at retail any alcoholic liquor:

(a) On any Sunday;

(b) On Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day;

(c) Before 9:00 a.m. or after 11:00 p.m. on any day when the sale thereof is permitted.

ARTICLE III. PRIVATE CLUBS.

3-301. DEFINITIONS. For the purpose of this article, the following definitions shall apply unless the context clearly requires otherwise:

(a) 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 corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them.

(b) 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.

(c) Club means a Class A or B club.

3-302. LICENSE REQUIRED. It shall be unlawful for any person granted a private club license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk.

3-303. LICENSE FEE.

(a) There is hereby levied an annual license fee on each private club located in the city which has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. The city license fee for a Class A Club shall be \$400 and the city license fee for a Class B Club shall be \$400.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any alcoholic beverage ordinances of the city.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the city club license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

3-304. BUSINESS REGULATIONS.

(a) No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverages for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.

(c) No club membership shall be sold to any person under 21 years of age, nor shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under 21 years of age.

ARTICLE IV. DRINKING ESTABLISHMENTS.

3-401. DEFINITIONS. For the purpose of this article, the following definitions shall apply unless the context clearly requires otherwise:

(a) Drinking Establishment means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

3-402. LICENSE REQUIRED. It shall be unlawful for any person granted a drinking establishment license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a city license from the city clerk.

3-403. LICENSE FEE.

(a) There is hereby levied a biennial license fee of \$400 on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any alcoholic beverage ordinances of the city.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the city drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

3-404. BUSINESS REGULATIONS.

(a) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverage for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.

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

Section 2. This ordinance shall be published one time in the official city newspaper.

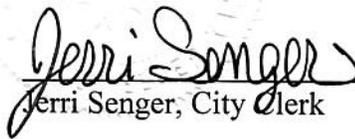
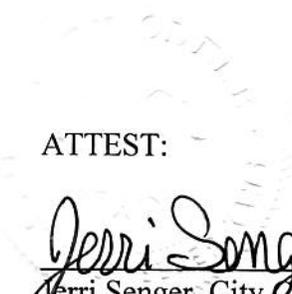
Section 3. This ordinance shall take effect and be in force from and after April 1, 2019.

PASSED AND APPROVED this 4th day of March, 2019.



Ryan Duskie, Mayor

ATTEST:



Jerri Senger, City Clerk