

ORDINANCE NO. 4198

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 AN ORDINANCE AMENDING TITLE 5, CHAPTER 9, SECTIONS 1, 2, 6, 8,
 10, 11, and 12 OF THE MUNICIPAL CODE, TO COORDINATE LOCAL
 LICENSING OF RETAILERS UNDER THE KANSAS CEREAL MALT BEVERAGE ACT
 WITH AMENDMENTS THERETO TAKING EFFECT APRIL 1, 2019; REPEALING
 EXISTING PROVISIONS OF TITLE 5, CHAPTER 9, SECTIONS 1, 2, 6, 8,
 10, 11, 12, and 14 OF THE MUNICIPAL CODE.
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BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARNETT,
KANSAS:

SECTION 1. Title 5, Chapter 9, Section 1 of the Municipal
Code is hereby amended to read as follows:

5-9-1: DEFINITIONS; SALE AT RETAIL REQUIRES LICENSE:

(A) "Enhanced Cereal Malt Beverage" shall mean (1)
"cereal malt beverage" as that substance is presently
defined in K.S.A. 41-2701, and any subsequent
amendments thereto, and (2) shall also 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.

(B) All other terms defined in K.S.A. 41-2701, and any
subsequent amendments thereto, shall have the same
meanings when such terms are used in this Chapter.

(C) It shall be unlawful for any person to sell any
Enhanced Cereal Malt Beverage at retail without having
first secured from the City of Garnett a license for
each place of business which such person desires to
operate within the corporate limits of the city, as
herein provided. A person having a license to sell
such beverages only at retail in unopened, original
containers and not for consumption on the premises
shall not sell such beverages in any other manner.

(D) The license issued to a retailer by the City of
Garnett under the provisions of this Chapter, whether
such license is issued prior to April 1, 2019, or at
any time thereafter, shall be deemed to be a license
issued to a retailer under the Kansas Cereal Malt
Beverage Act and shall authorize the sale at retail of
enhanced cereal malt beverage from and after April 1,
2019.

SECTION 2. Title 5, Chapter 9, Section 2 of the Municipal
Code is hereby amended to read as follows:

5-9-2: LICENSE AND PERMIT FEES: The fees charged to allow persons to engage in the sale at retail of enhanced cereal malt beverages hereunder within the City of Garnett are hereby set and fixed as follows:

(A) For each place of business selling only in unopened, original containers and not for consumption on the premises, Fifty Dollars (\$50.00) per calendar year.

(B) For each place of business selling at retail for a particular event on what is commonly called a temporary permit, such fee shall be fixed by the governing body in granting said temporary permit, but in no case shall such fee be less than Fifty Dollars (\$50.00) for each such event.

(C) For every other place of business, Seventy-five Dollars (\$75.00).

All licenses shall be issued for a calendar year and the full amount of the annual license fee shall be required, regardless of the time of year in which the application is made, and the licensee shall be authorized to operate under said license for the calendar year for which said license is issued or for the remainder of the calendar year if such license is issued after January 1st of any year. Temporary permits shall specify the days and hours of each day that such sales shall be permitted, and the fee shall not be refunded by the city upon cancellation of the permit or the event, regardless of the reason for such cancellation.

SECTION 3. Title 5, Chapter 9, Section 6 of the Municipal Code is hereby amended to read as follows:

5-9-6: CERTAIN SALES ON CREDIT PROHIBITED:

(A) Except as provided by subsection (B), no person shall sell or furnish enhanced cereal malt beverages at retail on credit; on a passbook; on an order on a store; in exchange for goods, wares or merchandise; or in payment for any services rendered. If a person extends credit for such purpose, the debt attempted to be created shall not be recoverable at law and, in addition, such person shall suffer any criminal penalties provided by the state of Kansas or the ordinances of this city.

(B) A licensed retailer may sell enhanced cereal malt beverages to a consumer on credit pursuant to a credit card which entitles the user to purchase goods or services from at least 100 persons not related to the

user of the credit card.

SECTION 4. Title 5, Chapter 9, Section 8 of the Municipal Code is hereby amended to read as follows:

5-9-8: PURCHASE OR POSSESSION OF ENHANCED CEREAL MALT BEVERAGES BY CERTAIN PERSONS, OR SALE OF SAME TO CERTAIN PERSONS, PROHIBITED:

(A) No person under the legal age for consumption of enhanced cereal malt beverages shall buy, possess or consume, or attempt to buy, possess or consume, any enhanced cereal malt beverage in an licensed place of business.

(B) No licensee shall sell any enhanced cereal malt beverage to, or permit possession or consumption of the same by, any person under the legal age for consumption of enhanced cereal malt beverages in or upon the premises of licensed place of business.

(C) Nothing in this Chapter shall be construed to prohibit a licensee's bona fide employee who is at least eighteen (18) years of age from possessing within such licensed place of business enhanced cereal malt beverage product for the purpose of selling or dispensing the same, if:

1. The place of business is licensed only for sale of enhanced cereal malt beverage in the unopened, original containers and not for consumption on the premises; or,
2. The place of business is licensed both under this Chapter and also as a licensed food service establishment as defined by Kansas law.

SECTION 5. Title 5, Chapter 9, Section 10 of the Municipal Code is hereby amended to read as follows:

5-9-10: LOCATION OF PREMISES: No license shall be issued under this Chapter which would permit the licensee to sell enhanced cereal malt beverages at retail, other than in the unopened, original containers and not for consumption on the premises, for any premises within the City of Garnett other than in the following locations:

(A) The South Half (S½) of Block Thirty-four (34); the South Half (S½) of Block Thirty-five (35); all of Block Forty-seven (47); the South Half (S½) of Block Forty-five (45); the North Half (N½) of Block Fifty-four (54); all of Block Fifty-five (55); the

North Half (N½) of Block Fifty-six (56); or the North Half (N½) of Block Sixty-six (66); provided, however, that no license shall be issued, the issuance of which would permit the location of more than one such place of business in any of the hereinbefore described blocks or half blocks; and provided, further, that no license shall be issued in violation of the City's zoning ordinance and regulations thereunder.

(B) Any lot or tract within a B-1 general business district zone; provided, however, any such licensed business shall utilize one or more public streets for all public entrances thereto or exits therefrom. For purposes of this sub-section, a public alley is not to be considered a public street.

(C) The application for any temporary permit or any temporary expansion of a licensed premises shall specify particularly the area in which any enhanced cereal malt beverage sale and consumption shall be permitted and such area shall be defined on the premises by some physical barrier such as a fence, barricade, tent or similar feature if not within the confines of a structure or building.

(D) The City Commission of Garnett may grant an exception to sub-sections (A) or (B) for good cause shown. An applicant desiring an exception shall, at the time of submission of his or her application for a license under this Chapter, endorse on such application a request for the desired exception. After receiving an application for a license so endorsed, the governing body shall hold a public hearing on such requested exception. Notice of the time and place of such hearing shall be given by publication one time in an official newspaper of the City of Garnett, at least 20 days prior to such hearing. Such exception, if granted, shall be personal and shall extend only to the applicant and not to his or her heirs, successors, or assigns, but shall be good only for so long as said applicant shall be licensed to sell enhanced cereal malt beverages under this Chapter.

SECTION 6. Title 5, Chapter 9, Section 11 of the Municipal Code is hereby amended to read as follows:

5-9-11: BUSINESS OPERATING REGULATIONS:

(A) Every premises licensed under sub-section 5-9-2(C) shall be closed to the public and no member of the public shall be or remain in or upon the licensed premises between the hours of twelve thirty o'clock (12:30) A.M. and six o'clock (6:00) A.M. of any day.

(B) No person shall be employed or be permitted to continue in employment by any licensee or permittee in a managerial capacity or as a sales clerk who actually sells, carries for sale or receives payment for enhanced cereal malt beverages who is not a person of good character and a citizen of the United States and who, within two (2) years immediately preceding the date of his or her employment, or at any time during such employment, has been convicted of a felony or any crime involving a moral turpitude or been adjudged guilty of any crime or ordinance violation involving public intoxication or been adjudged guilty of driving a motor vehicle while under the influence of intoxicating liquor, or the violation of any other intoxicating liquor law of any state of the United States.

(C) No premises licensed under either sub-section 5-9-2(B) or sub-section 5-9-2(C) shall be operated with any private rooms or closed booths, but this shall not apply if the licensed premises are also currently licensed as a club under a license issued by the Kansas director of alcoholic beverage control.

(D) No licensee or permittee shall consume or permit any other person to consume any enhanced cereal malt beverage upon the licensed premises at hours other than when the business is open to the public or during the time specified on the temporary permit; nor shall any licensee or permittee, or employee or volunteer worker of either, consume any enhanced cereal malt beverage or any alcoholic liquor during the hours he or she is on duty at such business or event.

(E) Except for retailers licensed pursuant to both this Chapter and the Kansas club and drinking establishment act:

1. No enhanced cereal malt beverage shall be sold between the hours of twelve o'clock (12:00) midnight and six o'clock (6:00) A.M., except under a temporary permit.

2. Except under a temporary permit, no enhanced cereal malt beverage shall be sold on Sunday, except in a place of business licensed under this Chapter which also derives not less than thirty percent (30%) of its gross receipts from the sale of food for consumption on the licensed premises.

3. Pursuant to K.S.A. 41-2911(b)(1), the sale at retail of enhanced cereal malt beverages in the unopened, original containers is allowed within the

City of Garnett on any Sunday, except Easter, between the hours of twelve o'clock (12:00) noon and eight o'clock (8:00) P.M.

(F) With respect particularly to event sponsors holding a temporary permit, the permit holder:

1. Shall not sell any enhanced cereal malt beverage for removal from or for consumption off the permitted premises.
2. Shall be responsible for the conduct of the event, and shall be responsible for all violations of this Chapter and all applicable Kansas laws committed by an employee, a volunteer worker and any employee or agent of any person or association contracting with the permit holder to provide goods or services in connection with the event.
3. Shall be present in person at all times during an event, or shall designate another individual who will be responsible for the conduct of the event in the permit holder's absence.
4. Shall, if an organization or association, designate one or more agents who shall be personally present at all times during an event and who will be responsible for the conduct of the event.
5. Shall prominently display at such event the temporary license or permit and the name of the individual or agent(s) in charge of the event.
6. Shall not operate the event between the hours of two o'clock (2:00) A.M. and nine o'clock (9:00) A.M. of any day, nor allow sales of enhanced cereal malt beverage to occur during such hours; provided, however, nothing in this sub-section shall be construed to allow such operation or sale at any time not specifically stated in the said temporary permit.

SECTION 7. Title 5, Chapter 9, Section 12 of the Municipal Code is hereby amended to read as follows:

5-9-12: SUSPENSION OR REVOCATION OF LICENSES FOR LICENSEE'S REFUSAL TO PERMIT INSPECTION: All premises licensed under this Chapter shall be open to inspection by the city manager or any law enforcement officer or both. Refusal of the licensee to permit any such inspection of premises and any enhanced cereal malt beverages in the licensee's possession or control on said premises shall be grounds for the suspension or revocation of said license.

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SECTION 8. Title 5, Chapter 9, Sections 1, 2, 6, 8, 10, 11, 12, and 14 of the Municipal Code as the same presently exist are hereby repealed.

SECTION 3. This ordinance shall take effect and be in force, from and after its passage and its publication in an official newspaper of the City of Garnett, Kansas, or on and after April 1, 2019, whichever is later.

PASSED this ____ day of _____, 2019.

Mayor

ATTEST:

City Clerk