

**ORDINANCE NO. AL-3326**

**AN ORDINANCE RELATING TO CEREAL MALT BEVERAGE AND ALCOHOLIC LIQUOR IN THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTIONS 5.12.060 AND 5.48.080 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.**

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS, AS FOLLOWS:**

**Section 1.** Overland Park Municipal Code Section 5.12.060 is hereby amended to read as follows:

**5.12.060 Regulations - Hours of Operation - Standards of Conduct - Minors - Alcoholic liquor - Sanitation.**

**A. Hours of Operation.**

1. A limited retailer who is licensed to sell cereal malt beverages, low-alcohol beer, or non-alcoholic malt beverages at retail in the original package shall not sell cereal malt beverages, low-alcohol beer, or non-alcoholic malt beverages (a) On Sunday before 9 a.m. or after 8 p.m.; (b) on Easter Sunday; or (c) before 6 a.m. or after 12 midnight, on any day when the sale is permitted.
2. A general retailer who is licensed to sell cereal malt beverage, low-alcohol beer, and non-alcoholic malt beverage for consumption on the premises and who derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises shall not sell cereal malt beverages, low-alcohol beer or non-alcoholic malt beverages (a) between the hours of 12 midnight and 6:00 a.m. of any day when the sale is permitted or (b) on Easter Sunday.

Notwithstanding the above, cereal malt beverages or non-alcoholic malt beverages may be sold on premises which are both licensed pursuant to this chapter and licensed as a club or drinking establishment at any time when alcoholic liquor is allowed to be served on the premises.

3. Temporary permit holders shall not be issued temporary permits to sell cereal malt beverages, low-alcohol beer, or non-alcoholic malt beverages at any time the sale of such beverages are prohibited in subparagraphs A.1 and 2 above.

**B. Standards of Conduct.**

1. No licensee shall permit private rooms or closed booths to be operated in a place of business, but this provision shall not apply if the licensed premises are also currently licensed as a club pursuant to the club and drinking establishment act.
2. Each place of business shall be open to the public and to law enforcement officers of the City at all times during business hours by the licensee, except that a premises licensed as a private club pursuant to the club and drinking establishment act shall be open to law enforcement officers and members but not to the general public.

3. Except as otherwise provided by this section, no licensee shall permit a person under the legal age for consumption of cereal malt beverage, low-alcohol beer, or non-alcoholic malt beverage to consume or purchase, any cereal malt beverage, low-alcohol beer, or non-alcoholic malt beverage, in or about a place of business. A licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, low-alcohol beer, or non-alcoholic malt beverage if:
  - a. the licensee's place of business is licensed only to sell at retail cereal malt beverage or low-alcohol beer in the original package and not for consumption on the premises; or
  - b. the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.
4. No licensee shall permit any person to have any alcoholic liquor except low-alcohol beer in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.
5. Cereal malt beverages or non-alcoholic malt beverages may be sold on premises which are licensed pursuant to both the cereal malt beverage act and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.
6. No licensee shall knowingly sell, give away, dispose of, exchange or deliver any cereal malt beverage, low-alcohol beer, or non-alcoholic malt beverage to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of cereal malt beverage, low-alcohol beer, or non-alcoholic malt beverage.
7. No licensee shall offer or serve any free cereal malt beverage or non-alcoholic malt beverage or alcoholic liquor in any form to any person; or
8. No Licensee shall offer to serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee; or
9. No licensee shall sell, offer to sell or serve any person an unlimited number of drinks during any set period for a fixed price except at private functions not open to the general public or to the general membership of a club; or
10. No licensee shall encourage or permit on the business premises, any game or contest which involves drinking cereal malt beverage, low-alcohol beer, or non-alcoholic malt beverage or the awarding of drinks as prizes; or
11. No licensee shall advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections 7 through 10; or
12. Nothing in subsections 7 through 11 shall be construed to prohibit a licensee from offering free food or entertainment at any time.
13. Every licensee shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages, low-alcohol beer, or non-alcoholic malt beverages.
14. The licensee, in the operation of such place of business, shall at all times comply with the sanitary, health, building and fire code regulations and all ordinances of the city.

15. The licensee shall notify the City Clerk's office of any change in the manager, owner or incorporators of the licensee's place of business, and the notification must be received in the City Clerk's office within 10 days of such change.
16. A violation of, or non-compliance with, the provisions of this section shall be grounds for the revocation of such license under the provisions of 5.12.070.

**Section 2.** Overland Park Municipal Code Section 5.48.080 is hereby amended to read as follows:

**5.48.080 Hours for Selling - Minors - Persons Hired - Compliance with Sanitary Regulations.**

**A. Hours of Operation.**

1. **Retailers.** No retailer or his or her agent or employee shall sell any alcoholic liquor or cereal malt beverage during the following times:
  - a. Before 9:00 a.m. or after 11:00 p.m. Monday through Saturday; or
  - b. Before 9:00 a.m. or after 8:00 p.m. on Sunday; or
  - c. On Easter Sunday, Thanksgiving Day or Christmas Day.
2. **Microbreweries, Microdistilleries and Farm Wineries.** A microbrewery, microdistillery or farm winery may sell the type of alcoholic liquor it is permitted by state law to sell in the original unopened container to consumers for consumption off the licensed premises any time between 6:00 a.m. or after 12:00 a.m. on any day.

**B. Standards of Conduct.**

1. **Retailers.** No retailer or his or her agent or employee shall:
  - a. Sell, give away, dispose of, exchange or deliver any alcoholic liquor or cereal malt beverage to any person under the age of 21, except as permitted by K.S.A. 41-727, and amendments thereto; or
  - b. Knowingly sell, give away, dispose of, exchange or deliver any alcoholic liquor or cereal malt beverage to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor; or
  - c. Permit the consumption of alcoholic liquor or cereal malt beverage in or about the place of business, except for samples in conjunction with K.S.A. 41-308d, and amendments thereto; or
  - d. Employ any person under the age of 21 in the dispensing of alcoholic liquor; or
  - e. Employ any person who has been convicted of a felony or any violation of the alcoholic liquor laws of this city or this state or any other city or state or of the United States; or
  - f. Fail to comply with the sanitary, health, and fire safety regulations and ordinances of this city.
2. **Microbreweries, Microdistilleries and Farm Wineries.** No microbrewery, microdistillery or farm winery or their agent or employee shall:
  - a. Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor; or
  - b. Permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premises supervision of either the licensee or an employee of the licensee who is 21 years of age or over; or
  - c. Employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

- d. Employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony; or
- e. Knowingly sell, give away, dispose of, exchange or deliver any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor; or
- f. Advertise in violation of K.S.A. 41-714, and amendments thereto; or
- g. Fail to comply with the sanitary, health, and fire safety regulations and ordinances of this city.

**Section 3.** It is hereby declared to be the intention of the Governing Body that the sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection or section of this Ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections and sections of this Ordinance, since the same would have been enacted by the Governing Body without the incorporation into this Ordinance of any unconstitutional or otherwise invalid phrase, clause, sentence, paragraph, subsection or section.

**Section 4.** Existing Overland Park Municipal Code Sections 5.12.060 and 5.48.080 are hereby repealed.

**Section 5.** This Ordinance shall be published once each week for two consecutive weeks in an official City newspaper.

**Section 6.** THIS ORDINANCE SHALL TAKE EFFECT 61 DAYS AFTER FINAL PUBLICATION UNLESS WITHIN 60 DAYS OF ITS FINAL PUBLICATION A VALID PETITION SIGNED BY A NUMBER OF ELECTORS OF THE CITY OF OVERLAND PARK EQUAL TO NOT LESS THAN FIVE PERCENT OF THE NUMBER OF ELECTORS WHO VOTED FOR THE OFFICE OF THE PRESIDENT OF THE UNITED STATES AT THE LAST PRECEDING GENERAL ELECTION SHALL BE FILED WITH THE JOHNSON COUNTY ELECTION COMMISSIONER IN WHICH CASE THE ORDINANCE SHALL BECOME EFFECTIVE ONLY IF AND WHEN APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON.

*[Remainder of page intentionally left blank.]*

PASSED by the City Council this 21<sup>st</sup> day of July, 2021.

APPROVED by the Mayor this 21<sup>st</sup> day of July, 2021.

CITY OF OVERLAND PARK, KANSAS

(s) Carl Gerlach

Carl Gerlach  
Mayor

(SEAL)

ATTEST:

(s) Elizabeth Kelley

Elizabeth Kelley  
City Clerk

APPROVED AS TO FORM:

(s) Eric R. Blevins

Eric R. Blevins  
Senior Assistant City Attorney