

ORDINANCE NO. 19-03

AN ORDINANCE amending or repealing certain sections of the Galena City Code concerning cereal malt beverage and alcoholic liquor, Article Three.

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

Section 1. Alcoholic beverages – Cereal malt beverage licenses.

(a) All applications for a license shall be accompanied by a license fee of \$50.00 per year, which fee shall be in addition to any fee charged by the state of Kansas.

(b) All applications for on-premises retailer license shall be accompanied by a license fee of \$200.00 per year, which fee shall be in addition to any fee charged by the state of Kansas.

(c) In addition to the foregoing license fee each applicant shall pay the following administrative fees for inspection of the premises:

General inspection fee	\$200.00
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Section 2. Definitions; License Required; Exemption.

(a) “Beer” means beer, as defined by K.S.A. 41-102 and amendments thereto, but containing not more than 6% alcohol by volume.

(b) “Cereal malt beverage” means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729 and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

(c) “Off-premises retailer” means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer in original and unopened containers that is not for consumption on the premises.

(d) “On-premises retailer” means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer for consumption on the premises.

(e) No person shall sell or dispense any cereal malt beverages or beer at retail to the public without first having secured a license for each premises within the corporate limits of the city as provided in this chapter.

(f) Notwithstanding subsection (e), no cereal malt beverage license is required if a person holds a retailer’s license issued pursuant to the Kansas Liquor Control Act to sell, at

retail, alcoholic liquors or cereal malt beverages.

Section 3. Application.

A person shall make application at the office of the city clerk and accompany the application by the license fee required by this ordinance, for each premises for which a license is desired. The application shall be verified and upon a form prepared by the attorney general of the state and shall contain:

(a) The name and address of the applicant and the length of time that the applicant has resided in the state.

(b) The particular premises for which a license is desired.

(c) The name of the owner of the property upon which the premises is located.

(d) A sworn statement that the applicant is a citizen of the United States and not less than 21 years of age, and that he has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or alcoholic liquor or intoxicating liquor law of any city, state or of the United States, including laws pertaining to the operation or attempted operation of a motor vehicle while under the influence of intoxicating liquor or drugs.

Section 4. Serving outside the premises.

An on-premises retailer may serve cereal malt beverages and beer outside of the premises provided (1) the applicant has secured a permit and (2) serves the cereal malt beverage and beer within the confines of the permits.

Section 5. Fees – Term.

(a) The license fees under this chapter shall be as prescribed

(b) The term of each on-premises retailer's license shall be the calendar year. The term of each off-premises retailer's license shall be the 12-month period beginning July 1st and ending June 30th of the following year.

(c) 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 such license for the remainder of the period for which the license is issued.

Section 6. License application review; Approval Governing Body.

If the application is in proper form and accompanied by the license fee, the governing body shall examine the application, and after examination of the application and certification, the

governing body shall, direct the city clerk to issue a license to the applicant; provided, that no license shall be issued to:

(a) Residency. A person who is not a resident of Cherokee County and has not been: (i) a resident of the county for at least six months prior to the date of making application; and (ii) a resident of the State of Kansas for at least one year prior to the date of making application.

(b) Character. A person who is not of good character and reputation in the county.

(c) Citizenship. A person who is not a citizen of the United States.

(d) Convictions. A person who within two years immediately preceding the date of making application has been convicted of, released from incarceration for or released from probation or parole for a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any city, state or of the United States

(e) Partnership. A partnership, unless all members of such partnership are otherwise qualified to obtain a license.

(f) Corporation. A corporation, if:

(1) 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 under this section for any reason other than citizenship and residency.

(g) Interest in a corporation with revoked license. A person, partnership, or corporation if any manager, officer, or director, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager, director or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which has:

(1) had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or

(2) been convicted of a violation of the Drinking Establishment Act or the cereal malt beverage laws of Kansas.

(h) Limited liability company. A limited liability company unless the company meets the qualifications for licensure of a corporation, except that only those individuals owning in the aggregate 25% or more of the ownership interest in the company shall be required to meet the qualifications for an individual to obtain a license.

(i) Ineligible Spouse. (1) A person whose spouse would be ineligible to receive a

retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license; or (2) a person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure and such felony or other crime was committed during the time the spouse held a license.

(j) Manager or Agent. A person whose premises is to be conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of a licensee.

Section 7. Prohibited zones established.

(a) No premises retailer license shall be issued to any premises to be located within the following described zones unless the premises was licensed on or before April 1, 2019, or a special event retailers' permit has been granted by the governing body pursuant to K.S.A. 41-2703, as amended:

- (1) Within 300 feet of any church building.
- (2) Within 300 feet of any school building or schoolyard.
- (3) Within 200 feet of any on-premises retailer; provided, that the 200-foot limitation shall not apply to a restaurant as defined by K.S.A. 41-2601.

(b) The distances listed in this section should be measured in a straight line from the closest point of the premises sought to be licensed to the closest point of the building housing the cereal malt beverage establishment, church building, school building or schoolyard.

Section 8. Renewal on-premises retailer's license in prohibited zones.

Any person holding a license at a location within a prohibited zone established by the governing body shall be permitted to renew such license for the same location; provided, that such license is and has been continuously maintained by the licensee from and after April 1, 2019, and so long as the licensee is otherwise qualified under the ordinances of the city and laws of the state.

Section 9. Inspection approval – Initial inspection.

(a) Before an initial premises retailer license or off-premises retailer license shall be issued for any premises, the premises shall be inspected by the building, electrical, mechanical, plumbing and fire inspectors of the city, and no application shall be approved by the governing body unless such premises shall conform to the provisions of this chapter and all laws, including the building, electrical, fire, mechanical, and plumbing regulations of the city and the state.

(b) If the premises sought to be licensed under this chapter conform to the laws and regulations referred to in subsection (a) of this section, the inspectors shall so certify on the application of the applicant, and such inspectors shall thereafter make inspections at any time deemed necessary for the enforcement of the provisions of this chapter, as provided elsewhere. If the premises does not conform to such laws and regulations, the appropriate inspector shall deliver written notification specifying the reasons for such nonconformity to the applicant or an agent at the premises.

Section 10. Inspection approval – Inspection; license renewals.

On-premises retailers. Before a premises retailer license shall be considered for renewal, the premises shall be inspected by the fire and plumbing inspectors of the city, and no license renewal shall be approved by the governing body unless the premises shall be certified by the inspectors as conforming to the provisions of this chapter, all laws and regulations of the city that were in effect at the time of the initial certification for such license, and all fire and plumbing regulations of the city and the state. If the fire and plumbing inspectors determine that a premises inspected pursuant to this subsection contains any dangerous or unsanitary conditions that constitute a hazard to safety or health, a written report of such conditions shall be prepared and transmitted to the development services director or shall require corrective measures and compliance with applicable plumbing and fire codes as a condition for renewal of the license.

If the premises conforms to the applicable laws and regulations, the inspectors shall provide written notification to the city clerk. If the premises do not conform to the laws and regulations, the appropriate inspector shall deliver written notification to the applicant or an agent at the premises specifying the reasons for noncertification.

(b) Off-premises retailers. A premises licensed as an off-premises retailer shall not be inspected for compliance with building, electrical, plumbing, or fire regulations of the city and the state as a condition. This section shall not be interpreted as exempting such premises from compliance with building, electrical, plumbing, sanitary or fire regulations of the city and the state.

Section 11. Transfer.

The license shall not be transferable to any other person and it shall so state that it is not transferable in addition to showing the dates for which it is issued. Licenses may be transferable from one premises to another upon successful completion.

Section 12. Appeal to district court.

The decision of the governing body to deny a license may be appealed to the district court pursuant to K.S.A. 60-2101 and amendments thereto. Any appeal taken from an order suspending or revoking any such license shall not suspend the order of suspension or revocation during the pendency of any such appeal. In the case of the revocation of the license of any licensee, no new license shall be issued to such person or any person acting for or on his behalf for a period of six months thereafter.

Section 13. Definitions.

Unless otherwise defined in this chapter, the terms used in this chapter shall have the same meaning and definitions as defined in K.S.A. Chapter 41 and amendments thereto. As used in this chapter:

(a) "Beer" means beer as defined by K.S.A. 41-102 and amendments thereto, but containing not more than 6% alcohol by volume.

(b) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729 and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

(c) "Off-premises retailer" means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer in original and unopened containers that is not for consumption on the premises.

(d) "On-premises retailer" means a person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer for consumption on the premises.

Section 14. Unlawful possession or consumption of alcoholic liquor or cereal malt beverages – Exception.

(a) On Public Roads or Unenclosed Private Property Accessible to Public – Exception. No person shall drink or possess an open container of alcoholic liquor or cereal malt beverage on public streets, alleys, roads, highways or unenclosed private property that is accessible to the general public, including but not limited to parking lots, within the city or inside vehicles while on such places within the city.

(b) Except for consumption of alcoholic liquor or cereal malt beverages inside

vehicles, subsection (a) shall not apply to:

(1) possession or consumption of alcoholic liquor or cereal malt beverage on public streets, alleys, roads, sidewalks, or highways provided the governing body has approved a special event pursuant to K.S.A. 41-719 and 41-2645 and amendments thereto and/or issued a special event retailers' permit pursuant to K.S.A. 41-2703 and amendments thereto;

(2) a catered event when the caterer's licensee has complied with the requirements of K.S.A. 41-2643 and amendments thereto;

(3) possession or consumption of alcoholic liquor or cereal malt beverage within a common consumption area established by K.S.A. 41-2659 and amendments thereto.

(c) Private Property – Exceptions. No person shall drink or consume, or possess an open container of, alcoholic liquor or cereal malt beverage on private property, except:

(1) On premises where the sale of liquor by the individual drink is authorized by the state Club and Drinking Establishment Act;

(2) Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drinks containing alcoholic liquor nor for any substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor takes place in violation of K.S.A. 41-803 and amendments thereto;

(3) In a lodging room of any hotel, motel or boardinghouse by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of drinks containing alcoholic liquor nor for any substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor takes place in violation of K.S.A. 41-803 and amendments thereto;

(4) In a private dining room of a hotel, motel or restaurant if the dining room is rented or made available on a special occasion to an individual or organization for a private party, and if no sale of alcoholic liquor takes place in violation of K.S.A. 41-803 and amendments thereto;

(5) On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by the Kansas Liquor Control Act (K.S.A. 41-101 et seq.);

(6) On the premises of an unlicensed business for the patrons or guests of such business provided that the requirements of K.S.A. 41-719 and amendments thereto are met;

(7) Within a common consumption area established pursuant to K.S.A. 41-2659 and amendments thereto;

(8) Complimentary alcoholic liquor or cereal malt beverages at fund raising activities of charitable organizations pursuant to K.S.A. 41-104 and amendments thereto;
or

(9) Complimentary alcoholic liquor or cereal malt beverage served on the unlicensed premises of a business by the business owner or agent at an event sponsored by a nonprofit organization promoting the arts and which has been approved by the governing body.

(d) In a Private Room of a Place of Business – Exception. No person shall consume cereal malt beverages in any private room or closed booth in a place of business operating pursuant to K.S.A. Chapter 41, Article 27 (K.S.A. 41-2701 et seq.) unless the licensed premises are also currently licensed as a club pursuant to K.S.A. Chapter 41, Article 26 (K.S.A. 41-2601 et seq.).

(e) On Public or Municipal Property – Exceptions. No person shall drink or consume, or possess an open container of, alcoholic liquor or cereal malt beverage on public or municipal property, except:

(1) Those premises owned by the city and under the control of the airport authority which have been properly leased to private persons, and properly licensed under applicable state and local laws for the sale and dispensing of alcoholic liquor and cereal malt beverages;

(2) Real property leased by the city to others under the provisions of K.S.A. 12-1740 through 12-1749 inclusive, and amendments thereto, if such property is actually being used for hotel or motel purposes or purposes incidental thereto;

(3) Any state-owned or state-operated building or structure and upon the surrounding premises which are furnished to and occupied by any state officer or employee as a residence;

(4) Specified property, the title of which is vested in the city, as authorized by

K.S.A. 41-719 and amendments thereto;

(5) On the premises of any Kansas National Guard regional training center or armory and any building on such premises, as authorized by the regulations of the Adjutant General and approval by the Kansas Military Board;

(6) On the premises of a sidewalk café provided a permit has been issued.

(7) On the premises of any land or waters owned or managed by the Kansas Department of Wildlife, Parks, and Tourism unless prohibited by regulations adopted by the Secretary of the Kansas Department of Wildlife, Parks, and Tourism;

(8) On the premises of any state-owned historic site under the jurisdiction and supervision of the State Historical Society and on the surrounding premises, including buildings on the premises, as authorized by the rules and regulations of the Kansas State Historical Society; or

(9) On premises of a common consumption area established pursuant to K.S.A. 41-2659 and amendments thereto.

Section 15. Possession of alcoholic liquor on premises licensed to sell cereal malt beverage.

Except for beer, it shall be unlawful for any person to possess or consume any other alcoholic liquor in a licensed premises selling cereal malt beverages, unless the premises is also currently licensed by the state Director of Alcoholic Beverage Control.

Section 16. Samples.

All wholesalers and distributors selling or delivering any cereal malt beverages within the city shall, upon demand of any law enforcement officer, turn over to law enforcement officer samples of any cereal malt beverages in their possession for the purpose of testing the alcoholic content of such beverages.

Section 17. Hours of sale of cereal malt beverages.

(a) It shall be unlawful for an on-premises retailer or an off-premises retailer to sell cereal malt beverages or beer or to allow the same to be consumed:

(1) Before 6:00 a.m. or after 12:00 midnight Monday through Saturday.

(2) Before 12:00 noon or after 8:00 p.m. on Sunday, except in a place of business which is licensed to sell cereal malt beverages for consumption on the premises, which place of business derives not less than 30 percent of its gross receipts from the sale

of food for consumption on the business premises.

(b) No person shall be permitted to consume or drink any cereal malt beverage in or about a premises licensed to sell cereal malt beverages or beer during the times that sale is prohibited under subsection (a) of this section; provided, however, that this provision shall not apply if the licensed premises are also licensed as a drinking establishment by the state Director of Alcoholic Beverage Control.

Section 18. Unlawful sales of beer or alcoholic liquor by an on-premises or off-premises retailer.

It shall be unlawful for any on-premises or off-premises retailer to sell or dispense within the city alcoholic liquor, other than beer; provided, that this section shall not apply if the on-premises retailer is also operating under a license issued by the state Director of Alcoholic Beverage Control for a drinking establishment.

Section 19. Condition of sales by off-premises and on-premises retailers.

(a) An off-premises retailer shall sell cereal malt beverages and beer:

- (1) Only at the premises identified on the license application.
- (2) Only at retail.
- (3) Only in original and unopened containers.

(b) An off-premises retailer shall not:

- (1) Sell cereal malt beverages and beer for consumption at the licensed premises.
- (2) Permit cereal malt beverages or beer to be consumed at the licensed premises.
- (3) Sell cereal malt beverages or beer through curb service or drive-up service.

(c) An on-premises retailer shall sell cereal malt beverages and beer:

- (1) Only at the premises listed identified on the license application.
- (2) Only at retail.

(d) An on-premises retailer shall not sell cereal malt beverages or beer through curb service or drive-up service.

Section 20. Mixing drinks on licensed premises prohibited.

(a) No retailer of alcoholic liquor shall engage in or permit any person to mix drinks

containing alcoholic liquor in or on the licensed premises.

(b) The provisions of subsection (a) shall not apply to the preparation or mixing of samples for the purposes of conducting wine, beer or distilled spirit tastings, or any combination thereof, as authorized by K.S.A. 41-308d and amendments thereto.

Section 21. State license, city tax required.

Except for on-premises and off-premises retailers, it shall be unlawful for any person to sell alcoholic liquor in the city without first having obtained from the state Director of Alcoholic Beverage Control a license to so engage in such enterprise and without having paid to the city the occupation tax.

Section 22. Responsibility for violations on property – Abatement.

(a) It shall be unlawful for any person to allow consumption of alcoholic liquor in violation of this article on any property owned, leased or otherwise under such person's control.

(b) The property on which the violation of this article takes place shall be deemed to be a common nuisance and as such is subject to abatement as provided for in K.S.A. 41-805 and amendments thereto.

Section 23. Regulations governing state licensee.

It shall be unlawful for any licensee or holder of a temporary permit issued under the state Club and Drinking Establishment Act to:

(a) Employ any person under the age of 18 years in connection with the serving of alcoholic liquor.

(b) Knowingly employ or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States.

(c) Knowingly employ or continue in employment any person in connection with the serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of two or more violations of K.S.A. 21-5607 and amendments thereto, furnishing alcoholic liquor to minors or a similar law of any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of this or any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors

within the immediately preceding five years. For purposes of this section, participation by a person in a diversionary program involving any such charge described in this section shall not be considered a conviction of such charge.

(d) In the case of a club, to maintain at the licensed premises a current list of all members and their residence addresses, or refuse to allow the director, any of the director's authorized agent or any law enforcement officer to inspect such list.

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.

(f) Permit any employee of the licensee or permit holder who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of the licensee, permit holder, or an employee who is 21 years of age or over.

(g) Employ any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.

Section 24. Hours of operation.

(a) Except as provided in subsection (b), no public venue, club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on the premises between the hours of 2:00 a.m. and 6:00 a.m. on any day.

(b) A hotel of which the entire premises are licensed as a drinking establishment or as a drinking establishment/caterer may allow at any time the serving, mixing and consumption of alcoholic liquor and cereal malt beverage from a minibar in a guest room by guests registered to stay in such room, and guests of guests registered to stay in such room.

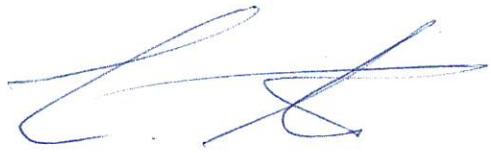
Section 25. This ordinance shall take effect and be in force from April 15, 2019, and after its passage, approval and publication in the official City newspaper.

Section 26. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 27. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body on April 15, 2019.

CITY OF GALENA, KANSAS



Lance Nichols, Mayor

ATTEST:



Flora Charles, City Clerk

