

ORDINANCE NO. AL-2591

AN ORDINANCE RELATING TO ALCOHOLIC LIQUOR, CEREAL MALT BEVERAGES AND NON-ALCOHOLIC MALT BEVERAGES IN THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTION 5.12.060.

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

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 or non-alcoholic malt beverages at retail in the original package shall not sell cereal malt beverages or non-alcoholic malt beverages (a) On Sunday before 12 noon 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 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 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 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 or non-alcoholic malt beverage to consume or purchase, any cereal malt beverage 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 or non-alcoholic malt beverage if:
  - a. the licensee's place of business is licensed only to sell at retail cereal malt beverage 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 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 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 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 sell, offer to sell or serve any drink to any person at any time at a price less than that charged the general public on that day, except at private functions not open to the general public; or
11. No licensee shall increase the size of a drink without increasing proportionately the price regularly charged for the drink on that day; or
12. No licensee shall encourage or permit on the business premises, any game or contest which involves drinking cereal malt beverage or non-alcoholic malt beverage or the awarding of drinks as prizes; or
13. No licensee shall advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections H7 through M12; or

14. Nothing in subsections ~~H7~~ through ~~N13~~ shall be construed to prohibit a licensee from offering free food or entertainment at any time.
15. Every licensee shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages or non-alcoholic malt beverages.
16. 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.
17. The licensee shall require that all patrons or customers of any place of business licensed as a general retailer and constituting a tavern, as defined above, shall exit and be off the premises of the place of business prior to and not later than one half hour after the legal hour of closing; provided however, a tavern, upon application to the Governing Body can secure a special permit to remain open after the legal hour of closing if the tavern adequately shows that the business is so conducted that a nuisance to the surrounding neighborhood will not occur, and the premises are in conformity with the zoning requirements of the city. Provided however, even if a special permit is secured by a tavern to remain open after the legal hour of closing, all cereal malt beverages or non-alcoholic malt beverages must be consumed prior to and not later than one-half hour after the legal hour of closing. The permit shall be issued for the period from January 1st through December 31 of each year.

The special permit may be revoked after at least ten days' notification to the permit holder of the Governing Body's determination that the after-hours' operation of the tavern is a nuisance in that it has resulted in such an unreasonable amount of noise as to constitute an annoyance and a discomfort to the neighboring residents; or that the tavern's patrons habitually use obscene language or habitually engage in lewd acts.

18. Licensees of those establishments herein defined as "taverns" in 5.12.010 shall, in addition to all other requirements of this chapter, comply with the following requirements for the conduct and operation of such establishment:
  - a. Prevent the removal from such establishment of open containers, in any form whatsoever, of cereal malt beverages or non-alcoholic malt beverages.
  - b. Be responsible for removing all trash, litter and debris from the property and parking lot of such establishment.
  - c. Provide necessary customer parking as required under the city zoning ordinances or as required by the city in the issuance of a special use permit for the conduct of a "tavern" business.
  - d. Provide plumbing facilities as required by O.P.M.C. Chapter 16.130 and the City's adopted edition of the International Plumbing Code.
  - e. Exclude any and all persons under the legal age for consumption of cereal malt beverage or non-alcoholic malt beverage from the premises.
19. 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.

20. 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. Existing Overland Park Municipal Code Section 5.12.060 is hereby repealed.

SECTION 3. This ordinance shall be published once each week for two consecutive weeks in *The Overland Park Sun*, an official City newspaper.

PASSED by the Governing Body this 21<sup>ST</sup> day of November, 2005.

APPROVED by the Mayor this 21<sup>ST</sup> day of November, 2005.

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Carl Gerlach, Mayor

ATTEST:

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Marian Cook  
City Clerk

APPROVED AS TO FORM:

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Tammy M. Owens  
Senior Assistant City Attorney