

Passed: March 23, 2010

Published: March 31, 2010

ORDINANCE NO. 2012

**AN ORDINANCE AMENDING SECTIONS 5.16.400, 5.16.420 AND 5.16.450 OF THE DERBY MUNICIPAL CODE, PERTAINING TO LICENSURE OF ESTABLISHMENTS FOR SALE OF CEREAL MALT BEVERAGE; AND REPEALING ORIGINAL SECTIONS 5.16.400, 5.16.420 AND 5.16.450 OF SAID CODE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:**

**Section 1.** Section 5.16.400 of the Derby Municipal Code is hereby amended to read as follows:

**5.16.400. Grant of license.**

- A. After examination of an application for a retailer's license, the governing body of the City shall, if the applicant is qualified as provided by law, direct the city clerk to issue a license to such applicant..
- B. Licenses shall be issued for one calendar year.
- C. The license shall show the name of the licensee and the year for which it is valid.
- D. No license shall be transferred to another licensee.

**Section 2.** Section 5.16.420 of the Derby Municipal Code is hereby amended to read as follows:

**5.16.420. Denial of license.**

- A. No license shall be issued to:
  1. A person who is not a resident of Sedgwick County, has not been a resident of Sedgwick County for at least six months or has not been a resident in good faith of the state of Kansas;
  2. A person who has not been a resident of the state of Kansas for at least one year immediately preceding application for such license;
  3. A person who is not of good character and reputation in the community in which the person resided;
  4. A person who is not a citizen of the United States;
  5. A person who, within two years immediately preceding the date of application approval, 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 violation of any other intoxicating liquor law of any state or of the United States;
  6. A partnership, unless all members of the partnership are otherwise qualified to obtain a license;

7. A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;
  8. A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications required of a licensee;
  9. 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.
  10. A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act.
- B. After examination of an application for a retailer's license, the governing body of the City may deny a license to a person, partnership or corporation if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation, has been an officer, manager or director or a stockholder owning in the aggregate more than twenty-five percent 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 club and drinking establishment act or the cereal malt beverage laws of this state, or of a county resolution or city ordinance requiring or prohibiting substantially the same conduct;
- C. Upon denial of a license, the license fee shall be refunded to the applicant.

**Section 3.** Section 5.16.450 of the Derby Municipal Code is hereby amended to read as follows:

**5.16.450. Revocation or suspension of license.**

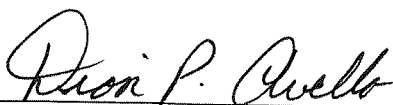
- A. The governing body of the City, upon five days' notice to the person holding a license, may revoke or suspend the license for any of the following reasons:
1. The licensee has violated any of the provisions of K.S.A. 41-2701 *et seq.*, or any rules or regulations made by the City;
  2. Drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business;
  3. The sale of cereal malt beverages to any person under the legal age of consumption of cereal malt beverage;
  4. Permitting any person to mix drinks with materials purchased in or upon the place of business or brought in for that purpose;
  5. The sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor as defined by K.S.A. 41-102, and amendments thereto; or
  6. The licensee has been convicted of a violation of the Kansas beer and cereal malt keg registration act;

- B. The provisions of subsections A.4 and A.5 of this section shall not apply if the place of business or premises is also currently licensed as a club or drinking establishment pursuant to the Kansas club and drinking establishment act.
- C. The governing body of the City, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:
  - 1. The licensee has fraudulently obtained the license by giving false information in the application therefor;
  - 2. Licensee has become ineligible to obtain a license under this act;
  - 3. Nonpayment of any license fees;
  - 4. Permitting any gambling in or upon the licensee's place of business;
  - 5. Employment of persons under 18 years of age in dispensing or selling cereal malt beverages;
  - 6. Employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States; or
  - 7. Violation of K.S.A. 21-4106 or 21-4107, and amendments thereto, in or upon the licensee's place of business.
- D. Within 20 days after the order of the governing body revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal.

**Section 4.** Original sections 5.16.400, 5.16.420 and 5.16.450 of the Derby Municipal Code are hereby repealed.

**Section 5.** This ordinance shall take effect and be in force from and after its adoption and publication once in the official city newspaper.

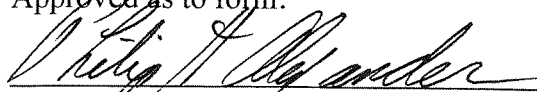
**PASSED BY THE GOVERNING BODY** this 23rd day of March, 2010.

  
\_\_\_\_\_  
Dion P. Avello, Mayor

ATTEST:

  
\_\_\_\_\_  
Jean Epperson, City Clerk

Approved as to form:

  
\_\_\_\_\_  
Philip H. Alexander, City Attorney