

AN ORDINANCE AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES OF THE CITY OF MARIETTA REGARDING ALCOHOLIC BEVERAGES; ADOPTING STATE LAW; ADOPTING DEFINITIONS; PROVIDING FOR CERTIFICATE OF COMPLIANCE; LEVYING OCCUPATIONAL TAX; ESTABLISHING REGULATIONS PERTAINING TO ALCOHOLIC BEVERAGE BUSINESS LOCATION, ADVERTISING, SIGNAGE AND HOURS OF OPERATION; PROVIDING FOR PROHIBITED ACTS; PROVIDING FOR PENALTIES; PROVIDING FOR REPEALER, SAVINGS, SEVERABILITY, AND CODIFICATION; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MARIETTA, OKLAHOMA:

SECTION 1. Chapter 6 of the Code of Ordinances, City of Marietta, Oklahoma, is hereby amended to read as follows:

Chapter 6

ALCOHOLIC BEVERAGES CODE

ARTICLE I. IN GENERAL

- Sec. 6-1. State law adopted by reference.
- Sec. 6-2. Definitions.
- Sec. 6-3 – 6-5. Reserved

ARTICLE II. OCCUPATIONAL TAX AND OPERATION OF BUSINESS

- Sec. 6-6. Certificate of zoning and certificate of compliance with fire, safety, and health codes required for state licensure.
- Sec. 6-7. Issuance of certificate of zoning and certificate of compliance.
- Sec. 6-8. Occupational tax levied.
- Sec. 6-9. Payment required; posting receipt.
- Sec. 6-10. Annual report.
- Sec. 6-11. Revocation of license.
- Sec. 6-12. Signs.
- Sec. 6-13. Advertising.
- Sec. 6-14. Zoning.
- Sec. 6-15 – 6-20. Reserved.

ARTICLE III. BEER AND WINE AND MIXED BEVERAGE SALES FOR ON PREMISES CONSUMPTION

- Sec. 6-21. Hours of operations.
- Sec. 6-22 – 6-30. Reserved.

ARTICLE IV. RETAIL SPIRITS STORES AND RETAIL STORES SELLING WINE OR BEER FOR OFF PREMISES CONSUMPTION

- Sec. 6-31. Hours of operation
- Sec. 6-32. Sale in retail store only.

Sec. 6-33 – 6-40. Reserved.

ARTICLE V. VIOLATIONS AND PENALTIES.

- Sec. 6-41. Prohibited acts; state law adopted by reference.**
- Sec. 6-42. Maintaining a place contrary to law.**
- Sec. 6-43. Transportation.**
- Sec. 6-44. Furnishing to minors.**
- Sec. 6-45. Possession by minors.**
- Sec. 6-46. Misrepresentation of age by 21.**
- Sec. 6-47. Reserved.**
- Sec. 6-48. Possession of unauthorized alcoholic beverages prohibited.**
- Sec. 6-49. Loitering on premises where sold.**
- Sec. 6-50. Employees of licensed establishments not to solicit patrons to purchase beverages for employees.**
- Sec. 6-51. Nudity in licensed business or establishment.**
- Sec. 6-52. Gatherings and consumption of alcohol by minors.**
- Sec. 6-53. Penalty.**
- Sec. 6-54 – 6-60. Reserved**

ARTICLE I. IN GENERAL

Sec. 6-1. State law adopted by reference.

Those portions of the Oklahoma Alcoholic Beverage Control Act, 37A O.S. § 1-101 et seq., applicable to cities are adopted in this chapter by reference as if fully set out.

Sec. 6-2. Definitions.

The definitions contained within the Oklahoma Alcoholic Beverage Control Act are incorporated into this Ordinance by reference. Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

Sec. 6-3 – 6-5. Reserved

ARTICLE II. OCCUPATIONAL TAX AND OPERATION OF BUSINESS

Sec. 6-6. Certificate of zoning and certificate of compliance with fire, safety, and health codes required for state licensure.

(a) Requirement of Certificate. Every applicant for an original or renewal license, except applicants for a special event, pursuant to Title 37A of the Oklahoma Statutes shall be required to furnish the Alcoholic Beverage Laws Enforcement Commission a certificate of compliance with zoning ordinances and a certificate of compliance with fire, safety and health codes.

(b) Application and Fee. Applications for such certificates shall be in writing on a form provided by the City Clerk. Each applicant shall pay at the time of filing the application a fee as established by resolution of the City Council of the City of Marietta. Upon receipt of an application for a certificate of compliance, the City Clerk shall cause an investigation to be made to determine

whether the premises proposed for licensed operations comply with the provisions of the zoning and any health, fire, building and other safety codes applicable to it.

(c) The City Clerk shall act on all such applications within twenty (20) days of receipt thereof.

Sec. 6-7. Issuance of certificate of zoning and certificate of compliance.

(a) Upon finding that the premises of an applicant for a certificate is in compliance with all applicable zoning ordinances, a certificate of zoning shall be issued to the applicant.

(b) Upon finding that the premises of an applicant for a certificate is in compliance with all applicable fire, safety, and health codes, a certificate of compliance shall be issued to the applicant.

(c) The above certificates of compliance shall be signed by the Mayor, City Clerk or the City Clerk's designee.

Sec. 6-8. Occupational tax levied.

An occupational tax, with the fee for said tax to be established by resolution of the City Council of the City of Marietta, shall hereby be levied for the privilege of operating as a retailer, mixed beverage, beer and wine, caterer, public event or special event licensee, bottle club, manufacturer, wine and spirits wholesaler or beer distributor in which such licensee has its principal place of business in the corporate limits of the City of Marietta.

Sec. 6-9. Payment required; posting receipt.

(a) Any state licensee originally entering upon any occupation as described in Sec. 6-8 shall pay the tax therefor to the City Clerk on or before the date upon which said licensee enters upon such occupation. Said licensee shall provide a copy of a current state license before payment of an occupation tax will be accepted. Thereafter, the licensee shall pay the tax annually on or before the first day of July.

(b) The occupation tax subject to this section shall be prorated on a monthly basis for the year in which an occupation began operations.

(c) Any state licensee operating a business described in Sec. 6-8 upon the effective date of this Ordinance shall pay the required occupational tax which shall be prorated on a monthly basis for the year in which this Ordinance became effective.

(d) Upon payment of the said occupation tax, the City Clerk shall issue a receipt to said state licensee, which said receipt shall be posted in a conspicuous place on the occupation premises.

Sec. 6-10. Annual report.

The City Clerk shall make an annual report to the Alcoholic Beverage Laws Enforcement Commission, covering the fiscal year, showing the number and class of licensees subject to the tax authorized by this chapter, and the amount of money received from said tax.

Sec. 6-11. Revocation of license.

(a) The City, as to any mixed beverage, beer and wine, caterer, public event or bottle club licensee having its principal place of business in the corporate limits of the City of Marietta, may

initiate a license suspension or revocation proceeding with the Alcoholic Beverage Laws Enforcement Commission, pursuant to the procedures outlined in Title 37A O.S. § 4-102.

Sec. 6-12. Signs.

No person owning, operating or maintain a retail alcoholic beverage store in the City shall cause or permit it to be designated by more than one sign, which shall contain only the words “retail alcoholic liquor store” or any combination of such words or any of them and which shall contain no letter of figure more than four inches in height or more than three inches in width and in which the lines of words, if more than one, shall not be more than one inch apart.

Sec. 6-13. Advertising.

No person shall advertise or cause to be advertised, in any manner other than as authorized by this article, the sale of alcoholic beverages within the limits of the City.

Sec. 6-14. Zoning.

No retailer, wholesaler, or manufacturer of alcoholic beverages shall be located, maintained or operated by any person, at any place, within the boundaries of the City, except at a location which such an establishment is permitted by zoning regulations include within this Code and as attached hereto.

Sec. 6-15 – 6-20. Reserved.

ARTICLE III. BEER AND WINE AND MIXED BEVERAGE SALES FOR ON PREMISES CONSUMPTION

Sec. 6-21. Hours of operations.

- (a) No alcoholic beverages may be sold, dispensed, served or consumed on the premises of a mixed beverage, caterer, public event, charitable event, special event, on-premises beer and wine, small brewer or brewpub licensee between the hours of 2:00 a.m. and 8:00 a.m.
- (b) Businesses where alcoholic beverages may be sold, dispensed, served or consumed on the premises shall be closed to the public between the hours of 2:00 a.m. and 6:00 a.m.

Sec. 6-22 – 6-30. Reserved.

ARTICLE IV. RETAIL SPIRITS STORES AND RETAIL STORES SELLING WINE OR BEER FOR OFF PREMISES CONSUMPTION

Sec. 6-31. Hours of operation

- (a) Retail spirit stores. No retail spirits store may sell any alcoholic beverages at any hour other than between the hours of 8:00 a.m. and midnight Monday through Saturday. Further, no person shall open or operate a retail spirits store on the following days:

- (1) Thanksgiving Day

(2) Christmas Day

(b) Retail beer or retail wine stores. A retail wine or retail beer establishment may offer wine or beer for sale on between the hours of 6:00 a.m. and 2:00 a.m. the following day, Monday through Sunday.

Sec. 6-32. Sale in retail store only.

No person shall sell at retail and no person shall deliver, in consequence or in completion of such a sale, any alcoholic beverages at any place in the City, except at a retail alcoholic beverage store in strict conformity with this article and the law of the State.

Sec. 6-33 – 6-40. Reserved.

ARTICLE V. VIOLATIONS AND PENALTIES.

Sec. 6-41. Prohibited acts; state law adopted by reference.

The prohibited acts and violations as provided by the Oklahoma Alcoholic Beverage Control Act, 37A O.S. § 1-101 et eq., applicable to cities are adopted in this chapter by reference as if fully set out.

Sec. 6-42. Maintaining a place contrary to law.

It shall be unlawful for any person to keep, maintain or aid or abet in keeping or maintaining, in the City a place where alcohol is manufactured, sold, bartered, given away or otherwise furnished in violation of laws of the State or ordinances of the City.

Sec. 6-43. Transportation.

It shall be unlawful for any person to knowingly transport in any vehicle upon a public highway, street or alley any alcoholic beverage, except in the original container which shall not have been opened and the seal upon which shall not have been broken and from which the original cap or cork shall not have been removed, unless the opened container is in the rear trunk or rear compartment, which shall include the spare tire compartment in a vehicle commonly known as a station wagon and panel truck, or any outside compartment not accessible to the driver or any other person in the vehicle while it is in motion.

Sec. 6-44. Furnishing to minors.

It shall be unlawful within the City limits for any person to sell, barter, furnish or give to any minor any alcoholic beverage, unless otherwise allowed by law.

Sec. 6-45. Possession by minors.

It shall be unlawful for any minor in any public place within the City to have in their possession or within any vehicle operated by them or under their control any alcoholic beverage.

Sec. 6-46. Misrepresentation of age by 21.

No person under 21 years of age shall misrepresent their age in writing or present false documentation of age or otherwise for the purpose of inducing any person to sell them alcoholic beverages.

Sec. 6-47. Reserved.

Sec. 6-48. Possession of unauthorized alcoholic beverages prohibited.

It is unlawful for any person or licensee to use, offer for use, purchase, offer to purchase, sell or possess any alcohol of any kind except as authorized by law.

Sec. 6-49. Loitering on premises where sold.

It is unlawful for any person to loiter in any place where alcohol of any kind is bartered, sold, given away or otherwise furnished contrary to law.

Sec. 6-50. Employees of licensed establishments not to solicit patrons to purchase beverages for employees.

It shall be unlawful for any licensee, owner, manager or employee of any business or establishment licensed pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act to permit an employee to solicit a patron to purchase an alcoholic beverage or nonalcoholic beverage for the employee or any other employee, or knowingly serve any employee with a beverage purchased by a patron or permit any employee to remain on the licensed premises who solicits a patron to purchase a beverage for any employee or who solicits a patron to purchase a beverage for himself or herself or for any person not a patron, or permit an employee to mingle or fraternize with patrons of such licensed business or establishment, except in the furtherance of service of food and/or drinks.

Sec. 6-51. Nudity in licensed business or establishment.

No owner, operator, partner, manager or person having supervisory control of any establishment licensed to sell or serve intoxicating beverages shall permit any of the following on or about any commercial premises where intoxicating beverages are dispensed or consumed:

- (a) The performance by any person of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are otherwise prohibited by law;
- (b) The actual intentional touching or caressing or fondling by any person of the breasts, anus or genitals;
- (c) Any person on the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, buttocks or genitals; or
- (d) Any person to perform acts of, or acts which simulate, sexual acts which are prohibited by law, or permit any person to use artificial devices or inanimate objects to depict any prohibited activities or permit the showing of films, still pictures, electronic reproductions or other visual reproductions depicting any of the prohibited activities described in this paragraph.

Sec. 6-52. Gatherings and consumption of alcohol by minors.

(a) For purposes of this Section, the following definitions shall apply:

(1) "Gathering" is a party, gathering, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

(2) "Minor" means any person under twenty-one years of age.

(3) "Parent" means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

(4) "Premises" means any residence or other private property, place, or premises, including any commercial or business premises.

(5) "Response costs" are the costs associated with responses by law enforcement, fire, and other emergency response providers to a gathering, including but not limited to: (1) salaries and benefits of law enforcement, code enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a gathering, and the administrative costs attributable to such response(s); (2) the cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a gathering; (3) the cost of repairing any City equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of a gathering; and (4) any other allowable costs related to the enforcement of this Section.

(b) Except as permitted by state law, it is unlawful for any minor to:

(1) consume at any public place or any place open to the public alcoholic beverage; or

(2) consume at any place not open to the public any alcoholic beverage, unless in connection with the consumption of the alcoholic beverage that minor is being supervised by his or her parent or legal guardian.

(c) It is the duty of any person having control of any premises, who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps are controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages present at the gathering; verifying the age of persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure that minors do not consume alcoholic beverages while at the gathering; and supervising the activities of minors at the gathering.

(d) It is unlawful for any person having control of any premises to knowingly host, permit, or allow a gathering to take place at said premises where at least one minor consumes an alcoholic beverage, whenever the person having control of the premises either knows a minor has consumed an alcoholic beverage or reasonably should have known that a minor consumed an alcoholic beverage had the person taken all reasonable steps to prevent the consumption of an alcoholic beverage by a minor as set forth in subsection (c) of this Section.

(e) This Section shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between a minor and his or her parent or legal guardian.

(f) Nothing in this Section should be interpreted to prohibit any family activity held in the confines of the family home from providing the use of alcohol to immediate family members within the supervision of parents and guardians. However, if a minor leaves such a family

gathering intoxicated and is found in public then said providers of alcohol will be held responsible in the same manner as a non-family gathering.

(g) Nothing in this section should be interpreted to prohibit any religious practice which includes the use of alcohol. However, if a minor leaves such a religious gathering intoxicated and is found to be in public then said providers of alcohol will be held responsible in the same manner as a non-religious gathering.

(h) This Section shall not apply to any premises licensed by the State of Oklahoma to dispense alcoholic beverages.

(i) Violations of this Section may be prosecuted by the City criminally, civilly, and/or administratively as provided by the Code of Ordinances. The City may seek administrative fees and response costs associated with enforcement of this Section through all remedies or procedures provided by statute, ordinance, or law. This Section shall not limit the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Section, nor shall they limit the City's ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of this Section.

(j) This Section shall not apply where prohibited or preempted by state or federal law.

Sec. 6-53. Penalty.

Except as otherwise provided by state law, whenever in this Chapter an act is prohibited or is made or declared to be unlawful, an offense, or a misdemeanor, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful the violation of any provision of this code or of any ordinance, upon conviction, shall be punished by a fine not exceeding five hundred dollars (\$500.00) plus court costs or imprisonment not exceeding thirty (30) days or both such fine and imprisonment. Each day or any portion of a day during which any violation of this code or of any ordinance shall continue shall constitute a separate offense.

Sec. 6-54 – 6-60. Reserved

Section 2. All ordinances or parts thereof, which are inconsistent with this Ordinance are here by repealed.

Section 3. Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceedings now pending in any court, or any rights acquired or liability incurred, nor any cause or causes of action accrued of existing, under any act or Ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. If any one or more of the sections, sentences, clauses, or parts of this Ordinance shall, for any reason, be held invalid, the invalidity of such section, sentence, clause, or part, shall not affect or prejudice in any way the applicability and validity of any other provision of this Ordinance. It is hereby declared to be the intention of the Mayor and City Council of the City of Marietta that this section of the Code of Ordinances for the City of Marietta would have been adopted had such unconstitutional, illegal, or otherwise invalid section, sentence, clause, or part had not been included.

Section 5. This Ordinance shall be codified as Chapter 6 of the Code of Ordinances for the City of Marietta, Oklahoma.

Section 6. It being immediately necessary for the preservation of the public peace, health, safety, and welfare of the City of Marietta and the inhabitants thereof that this ordinance be put into full effect, an emergency is hereby declared to exist by reason whereof this ordinance shall be in full force and effect from and after its passage and approval.

PASSED by the City Council and **SIGNED** by the Mayor of the City of Marietta, Oklahoma on this 11th day of September 2018.

CITY OF MARIETTA

BY:


KIMBERLY FRAIRE, MAYOR

ATTEST:


DOTTIE GWIN, CITY CLERK



NOTICE

Notice is given that on the September 11, 2018, at its regular meeting, the Marietta City Council passed Ordinance 2018-6, which contains the Alcoholic Beverages Code. Said Ordinance went into immediate effect. The caption, which provides a synopsis of said Ordinance, states as follows:

AN ORDINANCE AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES OF THE CITY OF MARIETTA REGARDING ALCOHOLIC BEVERAGES; ADOPTING STATE LAW; ADOPTING DEFINITIONS; PROVIDING FOR CERTIFICATE OF COMPLIANCE; LEVYING OCCUPATIONAL TAX; ESTABLISHING REGULATIONS PERTAINING TO ALCOHOLIC BEVERAGE BUSINESS LOCATION, ADVERTISING, SIGNAGE AND HOURS OF OPERATION; PROVIDING FOR PROHIBITED ACTS; PROVIDING FOR PENALTIES; PROVIDING FOR REPEALER, SAVINGS, SEVERABILITY, AND CODIFICATION; AND DECLARING AN EMERGENCY

A copy of said Ordinance is kept at the Marietta City Hall, at 101 West Main, Marietta, OK 73448 for inspection and examination.

Dated: September 14, 2018.

CITY OF MARIETTA

By:


DUSTIN SCOTT, CITY ADMINISTRATOR



Please publish one (1) time.