

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB7

ORDINANCE NUMBER: 2019-7

TITLE: AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE BLACK HAWK MUNICIPAL CODE REGARDING 3.2 BEER

WHEREAS, the Colorado General Assembly, in 2016, passed Senate Bill 16-197 which repeals the limit on alcohol content of fermented malt beverages, or "3.2 Beer" on January 1, 2019;

WHEREAS, the City Council desires to amend the Black Hawk Municipal Code to replace references to "3.2 beer" with "fermented malt beverages."

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. Section 4-192, subsections (b)(25)(e) and (f), of the City of Black Hawk Municipal Code are hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 4-192. Occupation Taxes.

* * *

e. All operators licensed to sell only ~~three and two tenths percent (3.2%) beer~~ fermented malt beverages in original containers for consumption off the premises, the sum of three hundred fifty dollars (\$350.00).

f. All operators licensed to sell only ~~three and two tenths percent (3.2%) beer~~ fermented malt beverages by the drink for consumption on the premises, the sum of one thousand dollars (\$1,000.00).

Section 2. The title of Article III of Chapter 6 is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

ARTICLE III – ~~3.2 BEER LICENSES~~ FERMENTED MALT BEVERAGE LICENSES

Section 3. Section 6-51 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-51. Definitions

* * *

Fermented Malt Beverage ~~or 3.2 beer~~ means beer and any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent ($\frac{1}{2}\%$) alcohol by volume, and ~~not more than three and two-tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume; except that fermented malt beverage shall not include confectionery containing alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S.~~

* * *

Malt Liquors includes beer and ~~shall be construed to mean~~ means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water containing ~~more than three and two-tenths percent (3.2%) of alcohol by weight or four percent (4%) alcohol by volume~~ not less than one-half of one percent ($\frac{1}{2}\%$) alcohol by volume.

Section 4. Section 6-58 of the City of Black Hawk Municipal Code is hereby amended by the deletion of subsection (b)(3).

Section 5. Section 6-91 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-91. Application required; Filing.

(a) An application for a ~~3.2 beer~~ fermented malt beverage license shall be required for the following:

- (1) Sales for consumption off the premises of the licensee; and
- (2) Sales for consumption on the premises of the licensee; ~~and~~
- ~~(3) Sales for consumption both on and off the premises of the licensee.~~

(b) All new applications for ~~3.2-beer~~ fermented malt beverage licenses shall be filed, in duplicate on forms made available by the office of the Secretary of State, with the City Clerk and shall be accompanied by the following:

* * *

Section 6. Section 6-92 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-92. Fee.

An application fee and a license or renewal fee, in accordance with the fee schedule as determined by the Colorado Department of Revenue, shall be made to the City at the time of making an application for a ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage license. This fee shall be used by the City to defray the expenses incurred by the City in investigating the applicant and conducting the hearing. No part of this fee shall be refundable to the applicant for any reason.

Section 7. Section 6-93, subsection (a) of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-93. Initial Appearance before City Council; Setting Public Hearing.

(a) The City Clerk shall place on the agenda of a City Council meeting the request for a ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the City Clerk has received the completed application.

Section 8. Section 6-94, subsections (a) and (c), of the City of Black Hawk Municipal Code are hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-94. Public Notice

(a) The applicant for a ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage license shall cause to be posted and published a public notice of hearing not less than ten (10) days prior to the public hearing. The sign used for posting such notice shall be of cardboard material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the

names and addresses of all partners. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary and manager or other managing officers.

* * *

(c) Where the building in which the ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage is to be sold is in existence at the time of the application for the license therefore, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such manner that it shall be conspicuous and plainly visible to the general public.

Section 9. Section 6-95, subsection (a), of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-95. Investigation of Applicant.

(a) The City Clerk shall make an investigation of the applicant for a ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage license, and, in the case of a corporation, the board of directors of the applicant, and, in the case of a partnership, the partners of the applicant. Such investigation shall include fingerprinting and the obtaining from the Colorado Bureau of Investigation a report on the applicant.

Section 10. Section 6-96 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-96. Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a ~~3.2% beer~~ fermented malt beverage license shall be established by the Mayor.

Section 11. Section 6-97 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-97. Considerations for Approving or Denying Application.

Before entering any decision to approve or deny the application for a ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage beer license, the City Council shall consider the following:

* * *

Section 12. Section 6-98 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-98. Approval or Disapproval

The decision of the City Council approving or denying the application for a ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage license shall be in writing stating the reasons and shall be issued within thirty (30) days after the date of the public hearing on the application. A copy of such decision shall be sent by mail to the applicant at the address shown in the application.

Section 13. Section 6-99 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-99. Issuance of License When Building Not Yet Constructed.

In the case of buildings not yet in existence, where the City Council votes in favor of the issuance of a ~~three and two-tenths percent (3.2%) beer~~ fermented malt beverage license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the applicant has substantially complied with the architect's drawings and specifications submitted with the application for such license.

Section 14. Section 6-100 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-100. Change of Location.

All ~~of the~~ procedures outlined in this Article shall be applicable to a change of location of an existing ~~3.2% beer~~ fermented malt beverage license.

Section 15. Section 6-101 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-101. Rehearing Limitation.

No application for the issuance of a ~~three and two tenths percent (3.2%) beer~~ fermented malt beverage license shall be considered by the City Council if an application for a similar type of license has been denied for the same location within the two (2) years immediately preceding the date of such new application.

Section 16. The title of Article IV of Chapter 6 is hereby amended to read as follows:

ARTICLE IV – ALCOHOLIC BEVERAGES AND ~~3.2—BEER~~
FERMENTED MALT BEVERAGE REGULATIONS

Section 17. Section 6-122 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-122. When Consumption on Premises Prohibited.

No licensee shall permit the consumption of malt, vinous or spirituous beverages or ~~3.2 percent beer~~ fermented malt beverages on the licensed premises at any time when the sale of such beverages is prohibited by law.

Section 18. Section 6-125 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-125. Nudity on Premises.

No licensee for retail sale by the drink or spirituous, vinous or malt beverages or ~~3.2 percent beer~~ fermented malt beverages shall permit any person to appear in a state of nudity within or upon the premises.

Section 19. Section 6-126 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-126. Indecent Displays.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or ~~3.2 percent beer~~ fermented malt beverages shall permit any lewd or indecent display by any person within or upon the premises.

Section 20. Section 6-127 of the City of Black Hawk Municipal Code is hereby amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Section 6-127. Showing of Films, etc., Depicting Acts Prohibited.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or ~~3.2 percent beer~~ fermented malt beverages shall permit the showing of films, still pictures, electronic reproduction or other visual reproductions depicting any act or live performance prohibited by this Article.

Section 21. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

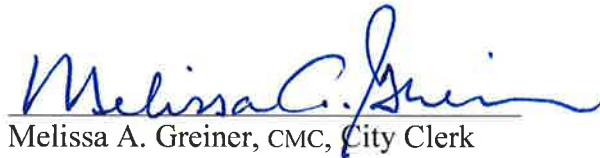
Section 22. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 23. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 13th day of February, 2019.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk

