

ORDINANCE 2018-13

AN ORDINANCE OF THE CITY OF FULTON, KENTUCKY AMENDING § 4-68 OF CHAPTER 4: ALCOHOLIC BEVERAGES ARTICLE III. LICENSES AND REGULATIONS FOR THE PURPOSE OF INCLUDING SUNDAY HOURS FOR SALE AND DELIVERY UNDER THESE SECTIONS.

WHEREAS, the City of Fulton desires to amend Chapter 4 Article III, Section 4-68 in order to include Sunday hours for sale of alcoholic beverages.

WHEREAS, the Commission of the City of Fulton has reviewed and discussed the following proposed changes and believe there is a compelling governmental economic interest to make reasonable and necessary changes to include Sunday sales; and

THEREFORE, BE IT ORDAINED by the City Commission of the City of Fulton, Kentucky, as follows:

SECTION 1:

AMENDMENT 1. ADDITIONS, ASSERTIONS & CHANGES:

CHAPTER 4: ALCOHOLIC BEVERAGES; ARTICLE III. LICENSES AND REGULATIONS, § 4-68 WHEN PERMITTED shall be amended to read in its entirety as follows:

- (A) A licensee for distilled spirits, wine or malt beverages by the drink shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 6:00 a.m. until 12:00 a.m. midnight on each day of the week, except Sunday. Sunday sales shall be permitted also from 6 a.m. until 12:00 a.m.
- (B) Retail package distilled spirits and wine sales and package malt beverage sales shall be permitted from 6:00 a.m. until 12:00 a.m. midnight on each day of the week, except Sunday. Sunday sales shall also be permitted from 6:00 a.m. until 12:00 a.m.
- (C) Retail alcohol sales shall be permitted from 6:00 a.m. until 12:00 a.m. midnight on election days. This shall include the hours during which the polls are open on any regular, primary, school, or special election day.
- (D) The licensee may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m. on January 1. These regulations are contingent upon the licensee having obtained the appropriate licenses from both the city and the state ABC Boards.
- (E) A licensee shall not sell, give away, or deliver any alcoholic beverage or permit any alcoholic beverage to be sold, given away, or delivered on the licensed premises during non-permitted hours for sale and delivery. A licensee shall not permit the consumption of alcoholic beverages on the licensed premises for a period of more than 30 minutes after the hour it is to close for business or to stop selling and delivering alcoholic beverages.
- (F) All times mentioned in this section are to be determined using the time zone of the locality (i.e. Central Standard Time).

SECTION 2: All other sections and provisions of the Ordinances of the City of Fulton, Kentucky not specifically amended herein, shall remain in full force and effect and shall not be considered amended and shall be incorporated by reference as if fully stated herein.

SECTION 3: That this ordinance shall be put before the Commission and shall be effective upon its second reading, adoption and publication as required by law

FIRST READING: OCTOBER 8, 2018

SECOND READING: OCTOBER 22, 2018

PUBLICATION DATE: OCTOBER 24, 2018

DAVID PRATER, MAYOR

ATTEST:

HELEN J. LEE, CITY CLERK

ORDINANCE 2018-13

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ATTEST:

HELEN J. LEE, CITY CLERK

Steven L. Beshear
Governor



Ambrose Wilson IV
Secretary

Frederick A. Higdon
Commissioner

**PUBLIC PROTECTION CABINET
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

1003 Twilight Trail
Frankfort, KY 40601
502-564-4850
502-564-7479 (fax)
abc.ky.gov

October 1, 2015

Dear Local ABC Administrator:

The purpose of this letter is to advise you concerning ordinances that require alcohol server training. The Department of Alcoholic Beverage Control is fielding an ever increasing number of inquiries on this topic from sources across the Commonwealth. This advisory letter is intended to lend guidance in a matter that has become one of statewide interest.

It is generally for the courts, rather than the Alcoholic Beverage Control Board ("Board), to determine the validity of an ordinance. The separation of powers prescribed in Sections 27 and 28 of the Kentucky Constitution means an administrative agency of the executive branch cannot usurp a power belonging to a court in the judicial branch.

Some businesses question the validity of ordinances that require alcohol training. They do so based on case law that limits the authority of local government to enact alcoholic beverage control ordinances. You may administratively cite and issue a penalty order against a licensee who fails to comply with your local ordinance. The business may appeal a local penalty order to the Board. Either side may appeal a final order of the Board to the Franklin Circuit Court. Ultimately the courts would resolve the issue regarding the validity of ordinances that require alcohol server training.

We trust this information is helpful to you. Please direct any question about this matter to our Legal Division.

Respectfully,

A handwritten signature in black ink, appearing to read "Stephen B. Humphress", written over a horizontal line.

Stephen B. Humphress
General Counsel

Cc: Files

ORDINANCE 2015-04

**AN ORDINANCE OF THE CITY OF FULTON, KENTUCKY
AMENDING CITY ORDINANCE 2013-19 RELATED TO THE
MANUFACTURING AND TRAFFICKING IN ALCOHOLIC BEVERAGES
WITHIN THE CORPORATE CITY LIMITS AND PROVIDING FOR THE
REGULATION OF SUCH ACTIVITIES, THE LICENSING OF PERSONS OR
ENTITIES ENGAGING IN SUCH MANUFACTURING OR TRAFFICKING,
AND FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS
ORDINANCE WITHIN THE CITY OF FULTON, KENTUCKY**

WHEREAS, the City of Fulton has elected to amend Ordinance 2013-19 codified in the City of Fulton Code of Ordinances in Chapter 4 Article III: Alcoholic Beverages licenses and Regulations

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FULTON, KENTUCKY THAT ORDINANCE 2013-19 IS HEREBY AMENDED FOR THE SOLE PURPOSE OF ADDING SUB-SECTION 4-75 TO IMPOSE A REGULATORY LICENSE FEE ON GROSS RECEIPTS OF ALL SALES OF ALCOHOLIC BEVERAGES PURSUANT TO APPLICABLE STATUTORY PROVISIONS AND SHALL READ IN ITS ENTIRETY AS FOLLOWS, to-wit:

SECTION 4 SUB-SECTIONS 75: REGULATORY LICENSE FEE

- (A) Pursuant to KRS 243.075, there is hereby imposed a Regulatory License Fee on gross receipts of sale of alcoholic beverages of each license issued by the City ABC Administrator. As of the time of adoption of this ordinance, which includes the 2015-2016 fiscal budget year, the regulatory license fee shall be five percent (5%) on gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the regulatory license fee shall be five percent (5%) of gross sales. The regulatory license fee shall be five percent (5%) on gross retail sales of package malt beverages. These fees shall be paid quarterly. For every fiscal budget year thereafter, the City shall adopt at the budget adoption of each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the city for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the city. Should the city fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed until such time as the City shall adjust the fee.

(B) Payment of such regulatory fee shall be remitted to the City of Fulton ABC Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the city for the estimated cost of any additional policing, regulatory or administrative expense related to the sale of alcoholic beverages in the city. The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, except that a credit against a regulatory license fee in the city shall be allowed in an amount equal to any license fee imposed by the city pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the tax return approved for such use by the City. Payments are due no later than by the end of the month immediately following each calendar quarter.

(C) Failure to pay such quarterly remittance within ten (10 days) of the due date constitutes a violation and subjects the licensee to suspension or revocation.

(D) Penalty for failure to file a return and pay quarterly remittance by the due date shall be five percent (5%) of the tax for each ninety (90) days or fraction thereof.

The total late filing penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than ten dollars (\$10.00)

(E) Interest at the rate of eight percent (8%) per annum will apply to any late payments

(F) The City shall transmit any fees received upon collection into the appropriate designated account.

That this ordinance shall be put before the Commission and shall be effective upon its second reading, adoption and publication as required by law.

FIRST READING: JUNE 4, 2015

SECOND READING: JUNE 8, 2015

PUBLICATION DATE: JUN 11, 2015

DAVID PRATER, MAYOR

ATTEST:

HELEN J. LEE, CITY CLERK

RECEIVED

FEB 10 PM 2:55

CLERK

ORDINANCE #2013-19

AN ORDINANCE OF THE CITY OF FULTON, KENTUCKY RELATED TO THE MANUFACTURING AND TRAFFICKING IN ALCOHOLIC BEVERAGES WITHIN THE CORPORATE CITY LIMITS AND PROVIDING FOR THE REGULATION OF SUCH ACTIVITIES, THE LICENSING OF PERSONS OR ENTITIES ENGAGING IN SUCH MANUFACTURING OR TRAFFICKING, AND FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE.

WHEREAS the Board of Commissioners of the City of Fulton, Kentucky desires to amend Chapter 4 entitled "Alcoholic Beverages" including, Articles I-IV for purposes of complying with KRS 241 through 244 as amended by Senate Bill 13.

Now, therefore, be it ordained by the Board of Commissioners of the City of Fulton, Kentucky as follows:

That **Chapter 4: Alcoholic Beverages, Article I. In General** previously reserved shall include, read and be identified for publication and codification purposes as follows:

Section 4-1: Titled. This chapter shall be known as the "Alcoholic Beverage Control Ordinance" of the City of Fulton, Kentucky (City).

Section 4-2: Purpose: The purpose of this chapter is to establish uniform regulations requirements for the licensing and regulation of alcoholic beverage manufacture and sales pursuant to authorization of KRS 241 through 244.

Section 4-3: Definitions: The definitions of the words used throughout this chapter, unless the context requires otherwise, shall have the same meaning as those set out in the Kentucky Alcoholic Beverage Control laws (KRS Chapters 241, 242, 243, and 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.

Section 4-4: Scope: This chapter shall be construed to apply to the manufacture and traffic in both malt beverages and distilled spirits and wine where the context permits such application. Nothing in this chapter shall excuse or relieve the licensee, or the owner, proprietor, employee, agent or person in charge of any licensed premises where alcoholic beverages are sold from the restrictions, requirements and penalties or any other ordinance or ordinances of the City or of any statutes of the state relating to violations pertaining to alcoholic beverages.

That **Chapter 4: Alcoholic Beverages, Article II. Alcoholic Beverage Control Administrator** shall be amended to read as follows:

Section 4-31: OFFICE CREATED. There is hereby created in the City of Fulton, Kentucky the Office of City Alcoholic Beverage Control Administrator pursuant to KRS 241.160 *et seq.*

Section 4-32: APPOINTMENT; QUALIFICATIONS. Pursuant to KRS 241.170 the City Alcoholic Beverage Control Administrator shall be appointed by the City Manager after the City Manager has first determined whether the appointee meets all the qualifications of state law, including, but not limited to the requirements as set forth in KRS 241.100.

Section 4-33: OATH AND BOND. Pursuant to KRS 241.180 the City Alcoholic Beverage Control Administrator, before entering upon his or her duties, shall take the oath prescribed in Section 228 of the Constitution of the Commonwealth of Kentucky and shall execute a bond with a good corporate surety in the penal sum of not less than \$1,000.00. The cost of said bond shall be borne by the city.

Section 4-34: FUNCTIONS. The functions of the City Alcoholic Beverage Control Administrator shall be the same with respect to the City licenses and regulations as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky (hereinafter referred to as the ABC Board) with respect to state licenses and regulations, except that no amendment to these regulations proposed by the City ABC Administrator may be less stringent than the statutes relating to Alcoholic Beverage Control, or than regulations of the ABC Board. No regulation of the City Alcoholic Beverage Control Administrator shall become effective until the City Commission has first appropriately approved same.

Statutory reference:

Similar provisions, see KRS 241.190

Section 4-34(a): The City Alcoholic Beverage Control Administrator shall have all authority as authorized under Chapters 241 through 244 of the Kentucky Revised Statutes. The City Alcoholic Beverage Control Administrator, and the Alcoholic Beverage Control Administrator's investigators and Fulton City Police officers may inspect, for compliance purposes, any premises where alcoholic beverages are manufactured, sold, stored, or otherwise trafficked in, without first obtaining a search warrant.

Section 4-34(b): At any time, should the City Alcoholic Beverage Control Administrator have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any owner, stockholder, agent or employee of a licensed business, corporation, or LLC has a criminal record, he/she shall have the authority to require such person to appear in person at the Fulton Police Department for the purpose of having his or her fingerprints taken and a background check performed.

Section 4-35: APPEALS FROM ADMINISTRATOR'S DECISIONS. Appeals from the orders of the City Alcoholic Beverage Control Administrator may be taken to the State Alcoholic Beverage Control Board by filing with the Board within ten (10) days a certified copy of the orders of the City Administrator. Matters at issue shall be heard by the State Alcoholic Beverage Control Board in the form of an original proceeding. Appeals from the orders of the City Administrator shall be governed by KRS Chapter 13B.

Statutory reference. KRS 243.550

Section 4-35(a): When any decision of the City Alcoholic Beverage Control Administrator shall have been appealed, or when a protest is made against an application for any license and the State ABC Board shall have made a decision regarding such appeal or protested application, the City Alcoholic Beverage Control Administrator, upon receipt of notice of finality of the decision, shall enter such orders and take such action as required by the final order of the ABC Board. As further provided by law, and as used herein, no order of the ABC Board is final until all appeals or appeal times have been exhausted. A “final order” of the ABC Board is the order entered by said Board, unless an appeal is taken from the Board’s order pursuant to KRS 243.560 through 243.590, in which case the “final order” is the order entered by the Board upon direction from the reviewing court of last resort in the final order of said reviewing court.

Section 4-36 through 4-60 is hereby RESERVED.

That **Chapter 4: Alcoholic Beverages, Article III. Licenses** shall be amended and re-titled **Chapter 4: Alcoholic Beverages, Article III. Licenses and Regulations** to read as follows:

Section 4-61. REQUIRED. For the privilege of permitting and engaging in the business and transactions authorized herein in regard to traffic in alcoholic beverages in the City of Fulton and pursuant to the KRS 243.070, there is hereby established a city license for each of the state licenses specifically set forth and more particularly described in KRS 243.070. The fee for each city license shall be as set out in the schedule as set forth in Section 4-65 below; provided, however, that in the event KRS 243.070 shall be amended subsequent the adoption of the schedule provided herein and should said amendment authorize additional city licenses, not otherwise identified herein, the fee for each additional city license shall be the maximum fee provided in the statute as amended.

Section 4-62. APPLICATION.

Section 4-62(a). ADVERTISEMENT. Prior to the consideration of any application for a license, the applicant must publish a notice of its intent to apply for an alcoholic beverage license in a newspaper meeting the requirements of KRS Chapter 424 which sets out the requirements for legal notices. Said advertisement shall state the legal name and address of the applicant. It shall state and identify the owners of the business, the members of the partnership if the applicant is a partnership, and membership of the LLC if the applicant is an LLC, as well as the official name of the business and its address. If the applicant is a corporation, the advertisement shall state the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself. All advertisements shall state the location of the premises for which the license is sought, and the type of license for which application is made. A copy of said advertisement and proof of publication pursuant to KRS 424.170 shall be attached to the application.

Section 4-62(b). APPLICATION FEE & BOND. A nonrefundable application fee of \$50.00 shall be assessed and paid with the filing of the application for a city license. In the event a license is granted, the application fee shall be credited against the initial license fee. The application filed shall also be accompanied by a bond to the city, in the penal sum of \$500

executed by the applicant with one or more good and sufficient sureties acceptable to the city, or else a cash bond, conditioned upon the applicant's faithful compliance with and observance of law in respect of the conduct of the proposed business.

Section 4-62(c): APPLICATION FORM. Applications for the issuance of new licenses and for renewals of existing licenses shall be made in writing on the forms approved and supplied by the City Alcoholic Beverage Control Administrator and the City of Fulton, as amended from time to time. The application shall be verified and shall include such information concerning the applicant and the premises for which the license is sought as required by all applicable Kentucky Revised Statutes, the State ABC Board and the City of Fulton, including, but not limited to the following information:

- (1) Name and address;
- (2) License being sought;
- (3) Whether or not a citizen of the United States;
- (4) Date of birth;
- (5) Date residence was established in Kentucky, if a resident of Kentucky. If Fulton resident indicate when residence was established;
- (6) Whether or not he or she has any interest in any other license or LLC, corporation, partnership or other business organization holding a license under this ordinance;
- (7) Extent of stock or company ownership;
- (8) Whether or not he or she has any interest in any license or LLC, corporation, partnership or other business organization holding a license in any other state or province.

Each application shall be accompanied by a certified check, cash or money order for the amount of the license fee, less the \$50.00 application fee.

In addition to the requirements set forth above, the City Commission may elect, at any time, to approve and adopt by Municipal Order, a questionnaire consisting of additional questions to be answered by the applicant. In the event, said questionnaire is adopted and approved, it shall become part of the application process. The City Alcoholic Beverage Control Administrator may also require such other information as the Administrator may in his/her discretion deem desirable, reasonable or appropriate to the consideration of the application.

Section 4-62(d): ADDITIONAL APPLICATION CONDITIONS. In addition to any other inquiries, conditions or considerations required or permitted by law:

- (1) The City ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until the applicant and his place of business has been approved by any local City building inspector, code enforcement official, planning and zoning board and any and all other inspections required by the Kentucky Building Code; and
- (2) All applicants shall voluntarily submit to a criminal background check and shall sign a waiver allowing the release of this information to the City ABC Administrator; and

(3) No license to sell alcoholic or malt beverages shall be granted or renewed to any person who is delinquent in the payment of any taxes or fees due the City at the time of issuing the license, nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any delinquent taxes or fees due the City. Further, if a licensee becomes delinquent in the payment of any taxes or any fees due the City at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension; and

(4) No person, whether an applicant for license, or a licensee, shall in any manner attempt to bribe, threaten, unduly influence or intimidate the City ABC Administrator, or any member of his or her staff, or any state ABC Administrator or staff, in any matter in which an application or proposed application for license, or procedure for revocation or suspension is pending before such officer. This paragraph is not intended to stifle expressions of opinion; however, it is intended to make clear that the ABC Administrators are public officials charged with the administration and enforcement of law, both local and state. Any person applying for a license, or contesting the revocation or suspension of a license, who engages in attempted bribes, threats, attempted undue influence or intimidation of a City or state ABC Administrator or staff shall be disqualified from receiving or retaining a license, in addition to other penalties as provided by law. The procedures for appeals shall apply to disqualifications, revocations or suspensions under this section. This section shall not be interpreted to prohibit monetary settlements in lieu of revocation or suspension of license after a final order or revocation or suspension, where the ordinance and applicable statutes allow for such payments in settlement.

Section 4-62(h). REFUSAL, REVOCATION OR SUSPENSION. Before the application for a license under this article is acted upon, the City may review and investigate the application, the character and standing of the applicant and the worth of the sureties on the bond. Any application for a license or a renewal license may be refused, after investigation for any of the reasons set forth in KRS 243.450, 243.390 and 243.500, as well as violation of any city ordinance regarding alcohol beverage licensing, sales or the administration thereof. Additionally, any license may be revoked or suspended by the City ABC Administrator if the licensee shall have violated any of the provisions of Kentucky Revised Statutes Chapters 241, 242, 243, or 244, or any rule or regulation of the ABC Board or of the Department of Revenue relating to the regulation of the manufacture, sale, and transportation or taxation of alcoholic beverages or if such licensee shall have violated or shall violate any act of Congress or any rule or regulation of any federal board, agency or commission, or this chapter now, therefore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of the intoxicating liquors or any rules or regulations of the City heretofore in existence or authorized by the terms of Kentucky Revised Statutes Chapters 241, 242, 243, and 244 to be created, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any such license may be revoked or suspended for any cause which the City ABC Administrator in the exercise of his sound discretion deems sufficient.

A license may be revoked for any of the reasons for which the City ABC Administrator would have been required to refuse a license if the facts had been known. In addition to the foregoing stated causes, any license may be revoked or suspended for the following causes:

(1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the premises licensed.

(2) Making any false, material statements in an application for a license.

(3) If within a period of two (2) consecutive years, any licensee or any clerk, servant, agent or employee of the licensee shall have been convicted of two (2) violations of the terms and provisions of KRS Chapter 241, 242, 243, or 244 or any act heretofore or hereafter in effect relating to the regulation of the manufacture, sale and transportation of alcoholic beverages or if within such period, any licensee or any clerk, servant, agent or employee of the license shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one (1) such felony and one (1) such misdemeanor.

(4) Willful and deliberate failure or default of a licensee to pay an excise tax or any part thereof, or any penalties imposed by or under the provisions of any statutes, this chapter or acts of Congress relative to taxation, or for a violation of any rules or regulations of the Department of Revenue made in pursuance thereof.

(5) Setting up, conducting, operating or keeping, on the licensed premises, any gambling game, devise, machine or contrivance, or gift enterprise, or handbook or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such game, device, machine, contrivance, gift enterprise, handbook or facility.

Section 4-63 has been re-codified for purposes of this ordinance and included in Section 4-62(b) above.

Section 4-64 has been re-codified for purposes of this ordinance and included in Section 4-62(h) above.

Section 4-65: FEES: Applicants for a license under this article shall, prior to issuance thereof, pay the following license fees:

Section 4-65(a): DISTILLED SPIRITS AND WINE LICENSE FEES.

The following distilled spirits and wine licenses may be issued by the City, the fees for which shall be:

(1) Distiller's license, per annum.....	\$500.00
(2) Rectifier's license, per annum.....	\$3,000.00
(3) Wholesaler's Distilled Spirit and Wine license, per annum.....	\$3,000.00
(4) Quota Retail package license, per annum	\$550.00
(5) Quota Retail drink license, per annum	\$1,000.00
(6) Special temporary liquor license, per event	\$166.66
(7) Nonquota Type 1 Retail Drink License (includes distilled spirits, wine, and malt beverages), per annum:	\$200.00

- (8) Nonquota Type 2 Retail Drink License (includes distilled spritis, wine, and malt beverages, per annum.....\$800.00
- (9) Nonquota Type 3 Retail Drink License (includes distilled spirits, wine, and malt beverages), per annum.....\$300.00
- (10) Distilled Spirits & Wine Special Temp. Auction license, per event\$200.00
- (11) Special Sunday Retail Drink License, per annum.....\$300.00
- (12) Extended Hours Supplemental License, per annum.....\$2,000.00
- (13) Bottling House or Bottling House Storage License, per annum\$1,000.00

Section 4-65(b): MALT BEVERAGE LICENSE FEES.

The following kinds of malt beverages licenses may be issued by the City, the fees for which shall be:

- (1) Brewer’s license, per annum\$500.00
- (2) Microbrewery license, per annum.....\$500.00
- (3) Malt Beverage Distributor’s license, per annum.....\$400.00
- (4) Nonquota Retail Malt Beverage Package License, per annum\$200.00
- (5) Nonquota Type 4 Retail Malt Beverage Drink License, per annum.....\$200.00
- (4) Malt Beverage Brew-on-premises license, per annum.....\$100.00

Section 4-65(c): OTHER LICENSE FEES.

The following kinds of other licenses may be issued by the City, the fees for which shall be:

- (1) Caterer’s License, per annum.....\$800.00
- (2) Limited restaurant license or limited golf course license, per annum (includes distilled spirits, wine, and malt beverages).....\$1,200.00

Section 4-65(d) CERTAIN SPECIAL LICENSES DEFINED:

(1) **TEMPORARY LICENSES.** A special temporary distilled spirits and wine license or a special temporary wine license may be issued only as set out in KRS. 243.260. This license shall authorize the licensee to exercise the privileges of the license for a specified limited time, not to exceed thirty (30) days. In the case of a nonprofit organization holding a retail malt beverage license, such organization may be issued a distilled spirits and wine special temporary license or a special temporary wine license to sell distilled spirits and wine by the drink on the licenses premises, in conjunction with any public or private event, for a specified and limited time, not to exceed ten (10) days. A malt beverage temporary license maybe issued only as set out in KRS 243.290 and is subject to all conditions and regulations provided at the issuance of the license.

(2) **PRIVATE CLUB LICENSE.** A special private club license may be issued only as authorized in KRS 243.270 to a nonprofit social, fraternal, military, or political organization of club, which for more than one (1) year prior to the date of application has maintained and

operated a club room or rooms from which the general public is excluded. The privileges of the license shall be exercised only on premises where the general public is excluded.

(3) All restrictions and prohibitions applying to regular retail distilled spirits and wine licenses and retail malt beverages licenses shall apply to the special licenses, unless, otherwise provided by law.

Section 4-65(e) EXPIRATION OF LICENSE; PRORATION OF FEES. All city licenses, except temporary licenses, shall begin on January 1 of any year and shall expire on December 31 of the following year. Any licenses issued after June 30 of any year shall be assessed a fee which is based on the pro rata portion of the remainder of the license period; however, the cost of any license shall not be less than one-half (1/2) the amount of the full fee for an annual license of that type.

Section 4-65(f) PAYMENT OF LICENSE FEES; DELINQUENCY. No licensee shall enter into or begin operating any business for which a license is required by this ordinance until the license fee has been paid in full. The fee for renewal of any license shall be paid with the renewal application. Failure to pay any license fee within ten (10) days after it becomes due shall result in a penalty equal to ten percent (10%) of the license fee. Any licensee failing to pay the fees, including penalties, within ten (10) days after such fees are due may be subject to revocation of the license and to other penalties as provided in Section 4-102 of this ordinance.

Section 4-65(g) REFUND OF FEES. Should any licensee under this chapter be prohibited from conducting the licensed business for the full period covered by the license because of any changes that may hereafter be made in the laws of the commonwealth with reference to alcoholic beverages or other cause outside licensee's control, then the city shall refund to licensee the proportionate part of the license fee for the period during which licensee is prevented from carrying on said business if the licensee provides sufficient proof to the City ABC Administrator that such period of inactivity was not the fault of the licensee or the result of a revocation, suspension or other wrongdoing by licensee, or an agent or employee of the licensee. In the event a violation of this chapter occurs that results in the suspension or revocation of the license, the City shall not be required to refund any portion of the license fee.

Section 4-65(h). DISPOSITION OF FEES. The City shall transmit any fees received upon collection into the appropriate designated account.

Section 4-66: LICENSE FORM, ISSUANCE AND DISPLAY. All City licenses shall be in such form as may be prescribed by the City Commission and shall contain:

- (1) The name and address of the licensee;
- (2) The number of the license;
- (3) The type of license;
- (4) A description by street and number, or otherwise, of the licensed premises;
- (5) The name and address of the owner of the building in which the licensed premises are located;
- (6) The expiration date of the license;

(7) A statement in substance that the license shall not be a property or vested right and that it may be revoked at any time pursuant to law.

Section 4-66(a): LICENSE INFORMATION CHANGE. If there is a change in any fact required to be set forth in the application, subsequent the issuance of a license or license renewal, a verified amendment in writing giving notice of the change shall be filed with the City ABC Administrator within ten (10) days of the change. Since a number of licenses issued by the City are in the name of corporations or other business organization, it is necessary that ownership changes in such organizations be reported to the City ABC Administrator. The City ABC Administrator can, therefore, investigate the person to whom the ownership or management is transferred in order to ascertain whether that person is precluded by statute from holding an interest in an alcoholic beverage license.

(1) As used with regard to a partnership, corporation, LLC or other business organization herein, directors or officers of the corporation, or change in ownership or stock whereby any person secures ten percent (10%) of the outstanding ownership or stock. Transfer of more than ten percent (10%) of the total ownership or stock shall require a new license.

(2) The following information will be required concerning any new manager, partner or LLC member, new director, officer, or person securing any interest in alcoholic beverage license:

- (a) Name and address;
- (b) Nature of interest;
- (c) Whether or not a citizens of the United States;
- (d) Date of birth;
- (e) Date residence was established in Kentucky, if resident of Kentucky. If a Fulton, resident indicate when residence was established;
- (f) Whether or not he or she has any interest in any other license or LLC, corporation, partnership or other business organization holding a license under this ordinance;
- (g) Extent of stock or company ownership;
- (h) Whether or not he or she has any interest in any license or LLC, corporation, partnership or other business organization holding a license in any other state or province.

(3) This information shall be filed with the City ABC Administrator as a verified amendment of the application pursuant to which the license was granted. Filing shall be made within ten (10) days of any change of required information.

Section 4-66(b). RENEWAL OF LICENSE. Every year, except in the case of temporary licenses, each licensee shall renew its license. All renewal licenses must be on file with the City ABC Administrator no less than thirty (30) days prior to the expiration of the license for the preceding license period or the same shall be canceled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license period as a result of construction, act of God, casualty, death, the acquisition of the premises by any federal, state, city or other governmental agency or private organization possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew exiting lease; provided that said license shall file a written verified statement no less than twenty (20) days from the expiration date of the license, setting forth these

facts, and the City ABC Administrator is hereby authorized to extend the time for filing of a renewal of such license for a reasonable length of time within the sound discretion of the City ABC Administrator; provided, however, such licensee shall pay a license fee from the expiration date of the former license or licenses. Said license fee shall not be payable until application is made for the transfer of said license to a new location. The renewal by the City ABC Administrator of the license shall not be construed to be a waiver or acceptance of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee.

Section 4-66(c). GUIDELINES FOR APPROVAL OF QUOTA LICENSES. In the case of quota licenses, before approving an application, the City ABC Administrator is hereby directed to consider, in addition to the factors set out in KRS 243.450, 243.490 and 243.500, and any other factors the Administrator determines in his or her discretion to be reasonable and pertinent to the license application, the following criteria:

(1) **Ownership:** The City of Fulton places great value on business owners who are invested in the Fulton community.

(2) **Economic Impact:** The City of Fulton desires businesses which make the most positive impact on the community, in number of jobs, payroll, property investment and revenues to the city.

(3) **Site of Business:** The City of Fulton is interested in serving all geographic areas of the City. Therefore, the City does not wish to cluster all licensed ABC outlets in one area.

(4) **Aesthetics:** The City of Fulton is committed to protecting the character and beauty of our community.

(5) **Revitalization of Downtown:** The City of Fulton wholeheartedly supports the revitalization of downtown and the revitalization and reuse of existing buildings.

(6) **Capital:** The City of Fulton values businesses that demonstrate their ability to financially support and sustain their viability.

(7) **Public Support of Licensed Business in the Area:** The City of Fulton intends that public sentiment and safety be considered in deciding upon the approval of retail liquor sales licenses in any area of the City.

An applicant who has been refused a license by the City ABC Administrator may appeal the refusal to the ABC Board pursuant to KRS 241.200.

Section 4-66(d). LOST, DESTROYED OR MISPLACED LICENSE. When a license shall be lost, destroyed or misplaced without fault on the part of the licensee or his agent or employee, a duplicate in lieu of the original license shall be issued by the City ABC Administrator after the Administrator shall have been satisfied as to the facts; provided,

however, that the applicant for said duplicate license shall pay a fee of ten dollars (\$10.00) for the duplicate license.

Section 4-66(e). DISPLAY. Upon issuance of any license, the licensee shall, at all times, keep said license posted in a conspicuous place at the office or place of business mentioned in the license.

Section 4-67. SEPARATE LICENSE FOR EACH PLACE OF BUSINESS; TRANSFERABILITY. No license issued under this article shall authorize the sale of an alcoholic beverage at more than one place; a separate license must be obtained for each place where the alcoholic beverages is proposed to be sold; provided, however, that, a license may cover more than one room or place in the same building or on the same premises. No license issued under the terms of this article shall authorize the licensee to discontinue selling at one place and transfer his or her place of sale to another place, without the consent of the city and of the sureties upon the licensee's bond; nor shall any license be transferred from one person to another without the consent of the city, to be obtained only upon the filing of a new application, a new bond by the proposed transferee, and payment of (\$100.00) to the City for transfer administrative fees.

Section 4-68. PRORATION; RENEWAL. No license provided for by this article shall be issued for less than the full amount prescribed for a full year. Renewal licenses for succeeding years shall be due and payable on January 1 of every year.

Section 4-69. REVOCATION AND SUSPENSION. Upon the verified complaint of any person, or on the initiative of any law enforcement officer or of the City ABC Administrator, the City ABC Administrator may institute proceedings to revoke or suspend any license granted under this ordinance. A license may be revoked or suspended only after the licensee shall have been given written notice, by certified or registered mail, of the proposed revocation, including notice of the reasons for such proposed action. The licensee shall be given opportunity to be heard in opposition to the proposed revocation or suspension. The notice of proposed action shall advise the licensee of the date, time and place of the hearing. Notice shall be sufficient if mailed to the licensee at the address shown in the last application for a license or in the last statement supplemental to or in amendment of the application, whether or not the mailing is receipted for or claimed. The specific procedures to be followed in hearings on actions for revocation or suspension shall be prescribed by the City Commission of the City of Fulton by municipal order. Such order shall be maintained on file in the office of the City ABC Administrator and a copy furnished with any notice of proposed revocation or suspension sent to a licensee. If the City Council shall fail to adopt such municipal order, the procedures shall be those set out in the Kentucky Administrative Procedure Act (KRS Chapter 13B). A decision of the City ABC Administrator revoking or suspending a license may be appealed as provided in KRS 243.550. Within three (3) days after any order of revocation or suspension of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section. The licensee shall at once surrender his license to the City ABC Administrator. If the revoked or suspended license is not forthwith surrendered

by the licensee, the Chief of Police at the request of the City ABC Administrator shall immediately cause one of his officers to take physical possession of the license and return it to the City ABC Administrator. When a license has been revoked or suspended, the former licensee may, with prior approval of the City ABC Administrator, dispose of and transfer his stock of alcoholic beverages to an appropriate entity. Appeal from the decision of the City ABC Administrator revoking or suspending a license shall be to the ABC Board. The timely filing of an appeal shall stay further proceedings for revocation. If a license is revoked or suspended by an order of the City ABC Administrator, and the decision is not appealed, the licensee shall at once suspend all operations authorized under his license. Upon the entry of a final order of the ABC Board sustaining or ordering revocation or suspension on appeal, the licensee shall at once suspend all operation authorized under this license. If a license is revoked or suspended by an order of the City ABC Administrator, and the decision is not appealed, the licensee shall at once suspend all operations authorized under his license. Upon the entry of a final order of the ABC Board sustaining or ordering revocation or suspension on appeal, the licensee shall at once suspend all operations authorized under this license.

Section 4-69(a). REVIEW OF LICENSE; BOOKS, RECORDS AND REPORTS. Applicants to whom a license is issued pursuant to this Ordinance shall provide periodic information demonstrating compliance with the conditions of any license, such as, but not limited to, the continuing requirement that a minimum percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly regulatory fee filings. The City shall provide the form schedule to the licensee. The licensee's acceptance of a license to manufacture or traffic in alcoholic beverages shall constitute consent to the filing of the quarterly report. In the case of caterer filing, the quarterly report shall identify each catered event by type of event, date and address of the event, and shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales during the reporting period. This requirement for filing of reports notwithstanding, the City may at any time come upon the premises of any licensee and examine the books and records to determine whether the licensee is in compliance with all parts of this ordinance. In the event the conditions of any licensee requirement are not met during any particular quarter, the City ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the City ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the food sale percentage requirement has been met.

(1) Every licensee under this chapter shall keep and maintain upon the licensed premises adequate books and records of all transactions involved in the sale of alcoholic beverages in the same manner required by the rules and regulations of the ABC Board. Such books and records shall be available at all reasonable times for inspection by the City ABC Administrator and such city employees who may assist the City ABC Administrator in his or her review.

(2) For the purpose of assisting the City ABC Administrator in enforcement of this chapter, every licensee required to the ABC Board under KRS 243.850 shall provide a copy of such

report to the City ABC Administrator. Copies of any and all reports and correspondences to the ABC Board required by statute shall be furnished to the City ABC Administrator.

Section 4-69(b). DORMANCY.

(1) It is necessary that a licensee actually conduct the business authorized by such a license or else the license will be declared dormant and become null and void after ninety (90) days. Such is the intent of this section. Realizing that a licensee, like other business, may have his business interrupted by situations not under his control, various exceptions to the dormancy rule have been included in this section.

(2) Any license under which no business is transacted during a period of ninety (90) days shall be deemed inactive and, unless the conditions set forth in paragraph (3) below are proved to the satisfaction of the City ABC Administrator, the license shall be surrendered to the City ABC Administrator. If the license is not voluntarily surrendered, it shall be revoked by the City ABC Administrator.

(3) The provisions of paragraph (2) hereof shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain, whether acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. Prior to the expiration of ninety (90) days of inactivity, such licensee shall furnish to the City ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business, for any of the specific reasons set forth herein, and the City ABC Administrator may grant an extension of the dormancy with the license continuing to remain in effect during the license period or until same is transferred to another premises, notwithstanding the fact that no business is transacted during said period; provided, however, no such license shall be considered valid unless business is conducted there under within twelve (12) months from the date of notice to the City ABC Administrator. Such extension may not extend beyond the renewal date but may be for such times as the City ABC Administrator deems appropriate in exercise of his sound discretion.

Section 4-70 is hereby repealed.

Section 4-71 is hereby repealed.

Section 4-70: WHEN PERMITTED. The following shall apply:

Section 4-70 (a): A licensee for distilled spirits, wine or malt beverages by the drink shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 6:00 a.m. on each day of the week and until 12:00 a.m. midnight. Except there shall be no sales under this Section on Sunday.

Section 4-70 (b): Retail package distilled spirits and wine sales and package malt beverage sales shall be permitted from 6:00 a.m. until midnight each day of the week, except no Sunday sales.

Section 4-70 (c): Retail alcohol sales shall be permitted from 6:00 a.m. until 12:00 a.m. (midnight) on election days. This shall include the hours during which the polls are open on any regular, primary, school or special election day.

Section 4-70(d): The licensee may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m. on January 1. These regulations are contingent upon the licensee having obtained the appropriate licenses from both the City and State ABC Boards.

Section 4-70 (e): A licensee shall not sell, give away, or deliver any alcoholic beverage or permit any alcoholic beverage to be sold, given away, or delivered on the licensed premises during non-permitted hours for sale and delivery. A licensee shall not permit the consumption of alcoholic beverages on the licenses premises for a period of more than thirty (30) minutes after the hour it is to close for business or to stop selling and delivering alcoholic beverages.

Section 4-70(f): All times mentioned in this section are to be determined using the time zone of the locality (i.e., central standard time).

Section 4-71: CONDITIONS, PROHIBITIONS AND RESTRICTIONS.

Section 4-71(a): No gambling or game of chance unless otherwise authorized by the Commonwealth of Kentucky shall be permitted in any form on such licensed premises. Dice, slot machines, or any devise of chance is prohibited and shall not be kept on such premises.

Section 4-71(b): It shall be unlawful for any licensee licensed under this Ordinance to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from any law enforcement agency in Fulton County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or the City ABC Administrator, or his designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

Section 4-71(c): The licensee shall be responsible for maintaining security on his premises including providing adequate outside lighting to permit customers to utilize the parking area and to promote the safety, health and welfare of the general public utilizing the licensed premise. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

Section 4-71(d): It shall be unlawful for the licensee under this Ordinance who sells alcoholic beverages of any kind to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in direct connection with the sale of alcoholic beverages nor shall any licensee give away any alcoholic beverage in any quantity for less than a full monetary consideration.

Section 4-71(e): No licensee or agent or employee of the licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee sell alcoholic beverages to any person who is actually or apparently under the influence of alcoholic beverages, or known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period. No licensee shall permit any person who is actually or apparently under the influence of alcoholic beverages to remain on the licensed premises. As used herein, whether a person is actually or apparently under the influence of alcoholic beverages shall be determined by the licensee or server with specific reference to the principles and guidelines established in mandatory alcohol server training as to the signs of alcohol intoxication.

Section 4-71(f): The licensee shall not sell or dispense alcoholic beverages to any person who is under 21 years of age. The licensee shall check all id's to ascertain that every person attempting to purchase or consume alcoholic beverages is at least 21 years of age.

Section 4-71(g): The licensee shall display at all times in a prominent place a sign at least 8" x 11" in 30 point or larger type which states as follows:

Persons under the age of twenty-one (21) are subject to a fine of up to One Hundred Dollars (\$100.00) if they:

1. Enter licensed premises to buy, or have served to them, alcoholic beverages.
2. Possess, purchase or attempt to purchase, or get another to purchase alcoholic beverages.
3. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.

Section 4-71(h): The licensee, before commencing any business for which a license has been issued, shall post and display at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee or knowingly deface, destroy or alter the license in any respect.

Section 4-71(i): The licensee shall post in a prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the Alcoholic Beverage Control Commission, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects. A person who violates this subsection shall be subject to a fine of not less than ten dollars (\$10.00) no more than fifty dollars (\$50.00). KRS 243.895

Section 4-71(j): No wholesaler or distributor shall sell any alcoholic beverages to any person in the City for any consideration except under the usual credit or case terms of the wholesaler or distributor at or before the time of delivery. Nor shall any retail licensee sell to a purchaser for any consideration except for case at time of purchase.

Section 4-71(k): No licensee shall knowingly employ in connection with his or her business any person who:

1. Has been convicted of any felony within the last two (2) years;
2. Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;
3. Is under the age of twenty (20) years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined under state statute;
4. Within two (2) years prior to the date of his or her employment, has had any City license under this Ordinance revoked for cause.

Section 4-71(l): Licensees shall be prohibited from offering reduced price drink specials (e.g. discounts, two-for-one, happy hours) from 6:00 p.m. to closing.

Section 4-71(m): All retail beer and retail drink licenses shall be required to provide indoor or outdoor lavatory facilities for their customers where such beverages are consumed on the premises.

Section 4-71(n): No licensee shall offer or permit nudity, adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premise. No licensee shall permit explicit sexual activity, whether actual or simulated, upon any licensed premises. No licensee shall sponsor or permit wet t-shirt or wet clothing contests, lingerie fashion shows, mud wrestling, jello wrestling or similar activities, nor shall a licensee allow dancing with touching for compensation (including but not limited to wages, tips or gratuities), or any other service, display or contest requiring physical contact between patrons and/or patrons and employees on any licensed premises. No licensee shall sponsor, offer or permit drinking contests, all-you-can-drink specials or free drinks on any licensed premise in the City.

Section 4-71(o): No license shall be issued for any premises to operate a vehicle “drive-through” outlet for the sale of alcoholic beverages, nor shall any person or licensee operate or permit such a vehicle drive-through outlet. This prohibition shall not apply to a drive-up window at any premises licensed for retail packages liquor, wine or malt beverage, including retail beer, where the primary sales area is arranged for and utilized by persons entering the premises on foot and manually carrying out the products purchased therein.

Section 4-71(p): Violation of this Article shall subject the licensee to penalties provided in this chapter and shall be cause for revocation of license.

Section 4-72: POSSESSION BY MINORS PROHIBITED; NO PERSON SHALL AID POSSESSION BY MINORS.

Section 4-72(a): Except as specifically authorized under KRS 241 through 244, no person under the age of 21 may possess alcoholic beverages or enter onto any licensed premises for the purpose of acquiring alcoholic beverages.

Section 4-72(b): As provided in KRS 244.085, no person under the age of 21, except in the company of a parent or guardian, may enter any premises licensed for the package sale of alcoholic beverages. For purposes of this prohibition, "premises" specifically encompasses the entire lot upon which a licensed establishment is situated, including any drive-up window. The prohibition contained in this paragraph (2) shall not apply to premises where the usual and customary business of the establishment is a gas station, convenience store, grocery store, drugstore, or similar establishment.

Section 4-72(c): No person shall knowingly allow, assist, induce, cause or otherwise encourage any minor to be in possession of, use or consume alcoholic beverages. All licensees, as set out in beverages on the licensee's premises.

Section 4-72(d): No person being the owner or occupant or otherwise in possession or control of any property located within the City shall knowingly allow any minor to remain on such property while in possession of, using or consuming alcoholic beverages.

Section 4-72(e): It shall be a defense to any prosecution under this section if the person charged, upon discovery of said minor individuals, manifests a proper effort to enlist the aid of and cooperate with law enforcement personnel in stopping the minor individuals' possession, consumption or exemption by KRS 244.087.

Section 4-72(f): It shall be a defense to any prosecution under this section if the person charged, upon discovery of said minor individuals, manifests a proper effort to enlist the aid of and cooperate with law enforcement personnel in stopping the minor individuals' possession, consumption or use of alcoholic beverages, or that the minor individuals' possession of alcoholic beverages was exempted by KRS 244.087.

Section 4-72(g): It may be a defense to any prosecution under this section upon discovery that emergency medical attention is sought for self or others due to alcohol poisoning. If certain strict requirements are met, the law would provide immunity from criminal prosecution for less serious offenses such as alcohol intoxication, drinking alcoholic beverages in a public space, and possession of alcoholic beverages by a minor under 21 years of age. The Medical Amnesty law as created by SB 13 shall dictate the parameters of such defense.

Section 4-73: CONSUMPTION ON LICENSED PACKAGE PREMISES PROHIBITED; EXCEPTIONS; CONGREGATING ON CERTAIN ABC LICENSED PREMISES AND VACANT PREMISES PROHIBITED.

Section 4-73(a): No licensee of a package store, whether trafficking in distilled spirits, wine or malt beverages, shall permit consumption of alcoholic beverages on the premises unless said person or entity shall also have a drink license conferring the privilege of consumption on the premises or shall have a retail malt beverage license, which permits on premises

consumption. Any licensee who intends to permit on premises consumption shall, prior to permitting on premises consumption, notify the City ABC Administrator in writing of this decision. A licensee who does not permit on premises consumption shall post a prominent notice on the premises stating that consumption of alcoholic beverages on premises is prohibited.

Section 4-73(b): This restriction regarding on premises consumption shall not prohibit sampling as allowed for microbreweries and wineries under the provisions of KRS Chapter 243, or where sampling is permitted for a retail distilled spirits and wine licensee under provisions of KRS 244.050, or beer tastings as permitted in 804 KAR 11:030.

Section 4-73(c): No person or entity operating a package liquor store, whether trafficking in distilled spirits, wine or malt beverages, including retail package beer licensees, shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of the licensed premises so as to constitute a public nuisance.

Section 4-73(d): No person or entity being the owner or otherwise in possession or control of any vacant property shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of such property so as to constitute a public nuisance.

Section 4-73(d)(1): No persons shall congregate for the purposes, under the circumstances, or in the places proscribed in subsections (1) and (2) of this section.

Section 4-73(d)(2): It shall be a defense to any prosecution under subsection (1) or (2) if such licensed vendor or property owner shall permit the division of police to post and maintain a legible painted and printed sign in at least two (2) separate prominent places in such area, in letters of not less than three (3) inches in height, stating that congregating of person is prohibited and that violators shall be prosecuted for trespass pursuant to KRS 511.080.

Section 4-73(d)(3): As used in this section, the term:

(a) Habitual shall mean consistent, that is, by frequent practice or use, but not necessarily constant or exclusive;

(b) *Package liquor store* shall mean a retail establishment selling distilled spirits, wine and malt beverages in package containers pursuant to licenses issued for those purposes;

(c) *Public nuisance* shall mean any activity that endangers or interferes with the general use and enjoyment of neighboring property, passers-by or the health, safety and welfare of the public; and

(d) *Vacant property* shall mean a vacant lot on which no building or other structure exists or property on which any structure is unoccupied or unused, or which otherwise reflects abandonment by the owner or person with the right of occupancy.

Section 4-74: MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING. 7

Section 4-74(a): All persons employed in the selling and serving of alcoholic beverages shall participate in and complete a City-approved responsible beverage service training program. For a responsible beverage service training program to be approved by the City, it must effectively train its participants in the identification of false age documents and recognition of characteristics of intoxication. The City will not require enrollment in particular classes, but only that the training be obtained from a recognized program meeting the goals expressed in this chapter.

Section 4-74(b): All persons required to complete training under paragraph (1) above shall complete that training within thirty (30) days of the date on which the person first becomes subject to the training requirement. When a new business is licensed to serve alcoholic beverages, all employees must be trained prior to the opening of the business.

Section 4-74(c): Each licensee shall be responsible for compliance with the training requirements and shall maintain, for inspection by the City ABC Administrator, a record or file on each employee that shall contain the pertinent training information. Each premise licensed hereunder must at all times when alcoholic beverages are being served have at least one person currently certified in responsible beverage service training on duty.

Section 4-74(d): All persons completing the training required by this section shall be re-certified in responsible beverage service training from a program approved by the City not less than once every three years thereafter.

That **CHAPTER 4: ALCOHOL BEVERAGES; ARTICLE IV: SALE BY THE DRINK, including sub-sections 4-101 through 4-104 as previously approved and enacted by prior ordinance(s) is hereby repealed in its entirety.**

That hereby created is **CHAPTER 4: ALCOHOL BEVERAGES; ARTICLE IV: ENFORCEMENT, PENALTIES AND MISCELLANEOUS** including all sub-sections hereof shall read and state as follows:

Section 4-101: ENFORCEMENT

City police officers and the City ABC Administrator are authorized to enforce this Ordinance for alleged violations.

Section 4-102: PENALTIES.

Section 4-102(a): In addition to any criminal prosecution instituted in Fulton District Court against an alleged violator, the City ABC Administrator may assess the fines and penalties authorized in KRS 243.480, including the per diem assessments for ongoing violations. Should the fines or penalties assessed by the state change under KRS 243.480, then the fines or penalties under this Article shall be adjusted accordingly to mirror the fines or penalties imposed by state law. Payment of all fines shall be made to the City to be deposited in the appropriate designated account.

Section 4-102(b): Any person, firm or corporation who violates any of the provisions of this Ordinance, including all of this CHAPTER 4. ALCOHOL BEVERAGES, ARTICLES 1 through 4 and all sections and sub-sections hereof, for which no other penalty is hereby provided, shall, for the first offense, be fined not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00) or imprisoned in the county jail for not more than six (6) months, or both, and for the second and each subsequent violation, he shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or imprisoned in the county jail for not more than six months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, LLC, joint stock company, association or other business organization, or a fiduciary, the principal officer or officers responsible of the violation may be imprisoned.

Section 4-103: IMPLEMENTATION OF ORDINANCE PROVISIONS.

From time to time, the Fulton City Commission may by municipal order promulgate such rules and regulations and may publish and utilize such forms and other documents as in its discretion may be necessary for the proper implementation of this chapter.

Section 4-104: REPEAL OF PRIOR ORDINANCES PERTAINING TO ALCOHOLIC BEVERAGE CONTROL.

All prior ordinances pertaining to alcoholic beverage control have either been specifically amended or repealed herein by reference to pertinent Chapter, Article, Section or sub-section thereof, as applicable.

Section 4-105: SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase, or a portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

Section 4-106: EFFECTIVE DATE: This Ordinance shall be effective upon its second readings, adoption and publication.

FIRST READING : NOVEMBER 18, 2013

SECOND READING: NOVEMBER 25, 2013

PUBLICATION DATE: DECEMBER 05, 2013

APPROVED: _____
ELAINE FORRESTER, MAYOR

ATTEST:

HELEN LEE, CITY CLERK