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CHAPTER 73: ALCOHOLIC BEVERAGE CONTROL

§ 73.01 PURPOSE.

It is the purpose of this Chapter to promote economic development and tourism within the City by making provision for the sale of alcoholic beverages by the drink at certain restaurants and dining facilities in a manner consistent with the local option election heretofore conducted pursuant to KRS Chapter 242.

§ 73.02 DEFINITIONS.

AS used in this Chapter, unless a different meaning is clearly indicated, the definitions contained in KRS Chapters 241, 242, 243, 244 are hereby adopted as part of the alcoholic beverage control law of the City.

§ 73.03 INCORPORATION OF STATE LAW.

The provisions of the state alcoholic beverage control law contained in KRS Chapters 241, 242, 243, and 244 pertaining to licenses and regulations of the state alcoholic beverage control board as well as amendments and supplements thereto, are hereby adopted as part of the alcoholic beverage control law of the City, except as otherwise lawfully provided herein.

§ 73.04 SCOPE.

This Chapter shall be construed to apply to the sale of alcoholic beverage by the drink in conjunction with a meal at restaurants and dining facilities within the City of New Castle which seat a minimum of fifty (50) persons and derive a

minimum of seventy percent (70%) of their gross receipts from the sale of food, as provided in KRS 242.1244.

§ 73.05 FOOD SERVICE REQUIREMENT.

All license holders under this Chapter shall be required to maintain food service during all hours that alcohol is served.

§ 73.06 CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR.

(A) The City Alcoholic Beverage Control Administrator (the "City ABC Administrator") shall be appointed by the City Commission and may be removed by the Commission with or without cause. No conflict of interest shall be deemed to arise if the individual appointed as City ABC Administrator is also employed by the City in some other capacity.

(B) The city ABC Administrator shall have the power and authority to promulgate such regulations as may be necessary to implement this ordinance, pursuant to KRS 241.190 and KRS 241.060.

(C) The functions of the City ABC Administrator shall be the same with respect to the City's Alcoholic Beverages Licenses and Regulations as the functions of the Kentucky Alcoholic Beverage Control Board with respect to the state alcoholic beverages licenses and regulations, as provided in KRS 241.190; except that no amendments of proposed by the City ABC Administrator shall be more stringent than the statuses relating to alcoholic beverage control or the regulations of the state ABC Board. Regulations of the City ABC Administrator shall only become more effective upon the appropriate approval of such by the New Castle Commission.

(D) The City ABC Administrator and agents, if any, shall have the full police powers of peace officers, and their jurisdiction shall be coextensive with the boundaries of the city. They, and any City law enforcement officer, may inspect any premises where alcoholic or malt beverages are sold, stored, or otherwise trafficked without first obtaining a search warrant.

(E) The City ABC Administrator and agents are authorized to examine and inspect, and any reasonable time, all books and records required to be maintained by licensees under KRS 244.150, in addition to the reports otherwise required by this Chapter, the licensee shall submit to the City ABC Administrator a copy of all reports which the license is required or elects to submit to or file with the State Alcoholic Beverage Control Board.

(F) The City ABC Administrator shall have the same powers and duties with respect to suspension and revocation for cause of City licenses as the State Alcoholic Beverage Control Board has with respect to state license under KRS 241.060. The City Administrator, on his own initiative or on the complaint of any person, may institute proceedings to revoke or suspend any license issued under this ordinance.

§ 73.07 LICENSE.

(A) No alcoholic beverages shall be sold in the City except as permitted by the Kentucky Revised Statutes and except by a duly authorized licensee in compliance with the terms and conditions of this Chapter.

(B) Restaurants and dining facilities shall be eligible for the license for which provisions is made herein if they comply with all of the following requirements:

- (1) Such restaurants and dining facilities shall seat a minimum of 50 persons.
- (2) Restaurants and dining facilities licensed under this Chapter shall have articulated and convincing reasons to anticipate that they will derive a minimum of 70% of their gross receipts from the sale of food as certified by periodic documentation as herein required.

§73.08 LICENSE APPLICATION

(A) Representatives of restaurants and dining facilities seeking the license for which provision is made herein shall submit a completed application to the City ABC Administrator. The form provided shall be the same form utilized by the State Alcoholic Beverage Control Commission (ABC).

(B) Applicants for a license under this Chapter shall pay an annual license fee of \$400.00. The durations period for all licenses approved by the City ABC Administrator and issued by the City shall begin on July 1st and shall expire at midnight on the following June 30th. Any licenses issued after December 31st shall be assessed a fee that is based on the prorated portion of the remainder of the license period. However, no license shall be issued for less than one-half (1/2) of the annual fee.

(C) A verified statement of the applicant shall accompany the application, containing the affirmation of the applicant that the applicant anticipates that the gross receipts at the licensed premises through the sale of good shall be equal to or greater that 70% of its total gross receipts.

(D) The applicant for a City license shall tender with its application a consent document, which shall state:

“The undersigned applicant hereby grants its irrevocable consent to the City Alcoholic Beverage Control Administrator and his duly appointed agents, to come upon and inspect and search the licensed premises at any reasonable time.”

(E) The City licenses shall be issued and he fees collected by the City Clerk, who shall report to the City at the end of each month or quarter, all fees that have been collected.

§ 73.09 PERIODIC INFORMATION TO BE PROVIDED BE LICENSEE.

(A) Every licensee under this Ordinance shall keep and maintain on the licensed premises adequate records and books of transactions of all sales in the same manner as required by the Rules and Regulations of the State 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.

(B) Applicants to whom a license is issued authorizing the Sale of alcoholic beverages pursuant to this Chapter shall provide periodic information demonstrating compliance with the continuing requirement that 70% of the applicants gross income is earned from the sale of food. Such information shall be provided on or before March 31st, July 31st, September 31s0th, and December 31st of each year, and shall consist of a certificate from a certified public accountant familiar with the applicant’s pertinent business records, which shall state:

“I have conducted a limited scope audit according to accepted accounting principles of the pertinent records of _____ licensee under this Ordinance and certify that the licensee earned at least 70% of its gross receipts from the sale of food during the quarter ending _____.”

(C) The certificate shall contain a brief description of the methodology used in the determination of the certified percentage.

§ 73.10 MANDATORY RESPONSIBLE BEVERAGE TRAINING.

All Licensees, employees, or persons involved in the selling and serving of alcoholic beverages shall be at least twenty (20) years of age. They must all participate in and complete a City-approved Responsible Beverage Service training program, approved by the City ABC Administrator of the City of New Castle. Before approval of the program, the City

ABC Administrator shall first be satisfied that the training program is genuine and effectively trains all participants in the recognition of false identification and age documents, as well as the human characteristic of alcohol and/or drug intoxication. The City will not require enrollment in any particular classes, but only that the training be obtained from a recognized training program meeting the goals expressed in the Ordinance. The training person or agency must reasonably instruct upon and certify the participants competence in pertinent federal, state, and local laws related to the sale of alcohol; verification of age, forms of identification, and used documents of false or misleading identification, the effect of alcohol intoxication. This training must be completed within ninety (90) days of the date on which the person first becomes subject to the training requirement.

§ 73.11 LICENSE RENEWAL.

The license issued pursuant to this Chapter shall authorize the sale of alcoholic beverages until the next following June 30. The license may be renewed annually thereafter upon a showing that the criteria therefore have been met, the filing and approval of a renewal application, and the payment of a renewal fee.

§ 73.12 REGULATORY LICENSE FEE IMPOSED.

(A) For the purpose of full reimbursement to the City of the cost of any policy, regulatory, legal, or administrative expenses related to the sale of alcoholic beverages in a manner consistent with this Chapter, a Regulatory License Fee is imposed on the gross receipts from retail sales of alcoholic beverages under each license issued pursuant to this Chapter. The amount of this fee shall be adjusted from time to time by ordinance so that the same shall be reasonably estimated to insure full reimbursement to the City of the police, regulatory, administrative, or legal expenses herein referred to. The Regulatory License Fee shall be in addition to any other taxes, fees, or licenses permitted by law.

(B) Until adjusted by ordinance as hereinbefore required, the Regulatory License Fee shall be five percent (5%) of all sales of alcoholic beverages.

(C) Payment of the Regulatory License Fee shall accompany the quarterly reports approved for use by the City ABC Administrator, submitted to the City Clerk by the 20th day following each quarter. The City Clerk shall apply a credit toward the regulatory license fee equal to the amount of the annual license fee imposed by § 73.08 (B).

(D) Failure to pay the quarterly remittance within ten days after the due date shall constitute a violation of this Chapter, and in addition, shall constitute grounds for an immediate 30 day suspension of this license for which provision is made herein.

§ 73.13 ADDITIONAL RESTRICTIONS ON SALE BY LICENSE.

At no time shall any alcoholic beverage be sold between the hours of 12:00 a.m. (midnight) and 6:00 a.m. Monday through Saturday, not between 12:00 a.m. (midnight) on Saturday and 6:00 a.m. on Monday.

§ 73.14 CAUSE FOR REFUSAL TO ISSUE OR RENEW LICENSE AND FOR SUSPENSION AND REVOCATION OF LICENSE.

Causes for the refusal to issue or renew a license or for the suspension or revocation of a license shall be the same as provided for state licenses according to KRS 243.450, 234.490 and 243.500, and in addition thereto shall include the following:

- (A) The failure to obtain or retain a state license;
- (B) The failure to comply with the provisions of this Chapter regarding gross receipts from the sale of food or the

provisions of this Chapter regarding periodic certification from a certified public accountant;

- (C) The failure to pay the Regulatory License Fee when due; and
- (D) The failure to pay any fine for which provision is made herein.

§ 73.15 REVOCATION OR SUSPENSION OF THE LICENSE.

(A) Upon the occurrence of one or more of the causes for revocation and suspension, the City Alcoholic Beverage Control Administrator may, upon his own initiative or upon complaint, give notice requiring the licensee to show cause why a revocation or suspension should not occur and give notice of the time and place of a hearing on possible revocation or suspension. Upon the licensee's failure to show cause, such a suspension or revocation may be ordered by the City ABC Administrator. The licensee shall be afforded the right to:

- (1) Reasonable notice of charge;
- (2) Representation;
- (3) Presentation of such evidence and witnesses as in its discretion are appropriate to issues; and
- (4) A finding reasonably supported by the evidence.

(B) The City ABC Administrator may designate a City employee or other person to act as a hearing officer to conduct the hearing for which the provision is hereinbefore made. In the event of such a designation, the Hearing Officer's determination shall be in the form of a recommendation upon which the City ABC Administrator shall determine appropriate action.

§ 73.16 APPEALS.

Appeals from determination of the City ABC Administrator with respect to orders of that officer, including denial of applications or orders suspending or revoking the same, shall be addressed to the State Alcoholic Beverage Control Board in a manner consistent with KRS 241.200.

§ 73.17 PENALTY.

The sale of alcoholic beverages within City or not in conformity with this Chapter shall constitute a violation, punishable by fine up to \$500 for each offense; to be prosecuted as all other municipal ordinance violations are prosecuted. Each day of each violation shall constitute a separate offense.

§ 73.18 TRANSFER OR ASSIGNMENT OF LICENSE.

No license issued under this Ordinance shall be transferred or assigned, either as to the licensee or to the location except with prior approval of the City ABC Administrator and payment of a \$100.00 fee made payable to City of New Castle.

Done this 2nd day April, 2012.

HENRY COUNTY
FC08 PG2

Amended
Executive Order
Of

Henry County Judge/Executive
John Logan Brent

RECEIVED
SEP 29 2011
State Board of Elections

The Henry County Fiscal Court having received the petition for Local Option Election, and the Court having been otherwise sufficiently advised;

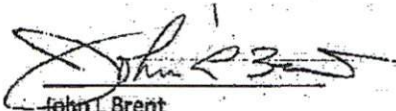
IT IS HEREBY ORDERED:

That the Precinct D-102, also known as North-East New Castle and the Precinct D 101, also known as West New Castle, in Henry County, Kentucky, shall conduct a special election on December 13, 2011, with regard to whether the sale of alcoholic beverages by the drink at restaurants which seat a minimum of fifty (50) persons and derive a minimum of seventy percent (70%) of their gross receipts from food if the alcoholic beverages are purchased in conjunction with a meal, will be allowed. This pursuant to KRS 242.1244.

The ballot prepared by the Henry County Clerk, Juanita Lashley shall state:

"Are you in favor of the sale of alcoholic beverages by the drink in the City of New Castle at restaurants and dining facilities with a seating capacity of at least fifty (50) persons and which derive at least seventy percent (70%) of their gross receipts from the sale of food if the alcoholic beverages are purchased in conjunction with a meal?"

So ordered this 29th day of September, 2011.



John L. Brent
Judge/Executive
Henry County Fiscal Court

DOCUMENT NO: 119800
RECORDED ON: SEPTEMBER 29, 2011 03:13:38P
COUNTY CLERK: JUANITA LASHLEY
COUNTY: HENRY COUNTY
DEPUTY CLERK: BETH G HALL
BOOK FC08 PAGES 2 - 2

HENRY COUNTY
FC08 PG1

EXECUTIVE ORDER
OF
HENRY COUNTY JUDGE/EXECUTIVE
JOHN LOGAN BRENT



The Henry County Fiscal Court having received the petition for Local Option Election, and the Court having been otherwise sufficiently advised;

IT IS HEREBY ORDERED:

That the Precinct D 102, also known as North-East New Castle and Precinct D 101, also known as West New Castle, in Henry County, Kentucky, shall conduct a special election on December 13, 2011, with regard to whether the sale of alcoholic beverages by the drink at restaurants which seat a minimum of fifty (50) persons and derive a minimum of seventy percent (70%) of their gross receipts from food if the alcoholic beverages are purchased in conjunction with a meal, will be allowed. This pursuant to KRS 242.1244.

The ballot prepared by the Henry County Clerk, Juanita Lashley shall state:

"Are you in favor of the sale of alcoholic beverages by the drink in the City of New Castle Precincts D 101 and D 102, at restaurants and dining facilities with a seating capacity of at least fifty (50) persons and which derive at least seventy percent (70%) of their gross receipts from the sale of food if the alcoholic beverages are purchased in conjunction with a meal?"

So ordered this 28th day of September, 2011.

JOHN L. BRENT
JUDGE EXECUTIVE
HENRY COUNTY FISCAL COURT

DOCUMENT NO: 119661
RECORDED ON: SEPTEMBER 28, 2011 08:39:30A
COUNTY CLERK: JUANITA LASHLEY
COUNTY: HENRY COUNTY
DEPUTY CLERK: BETH G HALL
BOOK FC08 PAGES 1 - 1

HENRY COUNTY
FC08 PG3

RECEIVED
OCT 19 2011
State Board of Elections

Executive Order to Rescind
BY
Henry County Judge/Executive
John Logan Brent

The Henry County Fiscal Court having received the petition for Local Option Election, and the Court having been otherwise sufficiently advised by counsel;

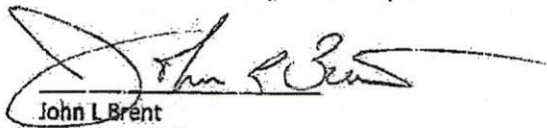
IT IS HEREBY ORDERED:

That the Precinct D 102, also known as North-East New Castle and the Precinct D 101, also known as West New Castle, in Henry County, Kentucky, shall not have a special election on December 13, 2011, with regard to whether the sale of alcoholic beverages by the drink at restaurants which seat a minimum of fifty (50) persons and derive a minimum of seventy percent (70%) of their gross receipts from food if the alcoholic beverages are purchased in conjunction with a meal, will be allowed. This pursuant to KRS 242.030, section 5.

The ballot prepared by the Henry County Clerk, Juanita Lashley was to state:

"Are you in favor of the sale of alcoholic beverages by the drink in the City of New Castle at restaurants and dining facilities with a seating capacity of at least fifty (50) persons and which derive at least seventy percent (70%) of their gross receipts from the sale of food if the alcoholic beverages are purchased in conjunction with a meal?"

So ordered this 19th day of October, 2011.



John L Brent
Judge/Executive
Henry County Fiscal Court

DOCUMENT NO: 119241
RECORDED ON: OCTOBER 19, 2011 @ 9:38:03AM
COUNTY CLERK: JUANITA LASHLEY
DEPUTY CLERK: BETH G HALL
BOOK FC08 PAGES 3 -- 3