

ORDINANCE NO. 2009-10

**AN ORDINANCE AMENDING ORDINANCE #2007-01
OF THE ANDERSON COUNTY FISCAL
COURT RELATING TO THE LICENSING AND REGULATION
OF THE SALE OF ALCOHOLIC BEVERAGES BY THE DRINK**

WHEREAS, the Anderson County Fiscal Court passed an Ordinance Relating to the Licensing and Regulation of the Sale of Alcoholic Beverages By The Drink and said Ordinance, known as Ordinance No. 2007-01, is recorded in the Office of the Clerk of Anderson County, and;

WHEREAS, the Anderson County Fiscal Court has determined that it is necessary to modify certain provisions of said Ordinance and make additions to said Ordinance in the interest of economic growth, development and tourism;

NOW THEREFORE, BE IT ORDAINED BY THE ANDERSON COUNTY FISCAL COURT, COMMONWEALTH OF KENTUCKY, as follows:

1) **SECTION 12—ADDITIONAL RESTRICTIONS ON SALE BY LICENSEE** — Shall be amended to read as follows:

"At no time shall any licensee sell any alcoholic beverage when the licensee does not have food available for sale, and in no event may any alcoholic beverages be sold between the hours of 1:30 a.m. and 6:30 a.m., Monday through Saturday, nor between 1:30 a.m. and 12:30 p.m. on Sunday."

2) The following section shall be added:

SECTION 14 - SUNDAY SALES OF DISTILLED SPIRITS, WINE AND MALT BEVERAGES— All state licensed Kentucky Small Farm Wineries and Distillers in Anderson County may sell distilled spirits and wine by the drink and by the package on Sunday between the hours of 12:30 p.m. and 1:30 a.m. and shall be subject to the same license application requirements and fees otherwise contained in this Ordinance. All state licensed Small Farm Wineries and Distillers may also sell malt beverages by the drink on Sunday between the hours of 12:30 p.m. and 1:30 a.m and shall also be subject to the same license application requirements and fees otherwise contained in the Ordinance.

- 3) Previous "Section 14—Penalty" shall be renumbered as "Section 15—Penalty".
- 4) Previous "Section 15—Severability" shall be renumbered as "Section 16—Severability".

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- 5) Previous "Section 16---Effective Date" shall be renumbered as "Section 17---Effective Date".
- 6) All other provisions of the Ordinance shall remain in full force and effect.
- 7) The Amendments to Ordinance No. 2007-01 as contained herein shall be effective from and after the passage, approval, attestation and publication as required by law.

INTRODUCED, AND GIVEN FIRST READING at a duly convened meeting of the Anderson Fiscal Court, Anderson County, Kentucky, held on the 3rd day of November, 2009.

Published in the Anderson News on November, 11, 2009.

GIVEN SECOND READING, PASSED ADOPTED, AND APPROVED by the Fiscal Court of Anderson County, Kentucky, upon motion of David Ruggles, seconded by Magistrate Buddy Sims, at a duly convened meeting held on the 1st day of December, 2009, with yea and nay votes as follows:

David Ruggles	<u>yea</u>
Forrest Dale Stevens	<u>yea</u>
Juretta Wells	<u>no</u>
Thomas Buddy Sims, Jr.	<u>yea</u>
Larry Smith	<u>absent</u>
John Wayne Conway	<u>yea</u>
Steve Cornish	<u>yea</u>

GIVEN FINAL PUBLICATION on the 9th day of December, 2009.

Steve J. Cornish
STEVE CORNISH
COUNTY JUDGE/EXECUTIVE

ATTEST:
Linda Edington
Linda Edington, Deputy County Clerk

DOCUMENT NO: 08170648
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COUNTY CLERK: JASON DENNY
DEPUTY CLERK: ANNETTE M BROWN
COUNTY: ANDERSON COUNTY
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ORDINANCE 2007-01

AN ORDINANCE TO ESTABLISH UNIFORM REGULATIONS AND REQUIREMENTS FOR THE LICENSING AND REGULATION OF THE SALE OF ALCOHOLIC BEVERAGES BY THE DRINK

WHEREAS, the Fiscal Court of the County of Anderson desires to provide for uniform regulations and requirements for the licensing and regulation of the sale of alcoholic beverages by the drink for consumption on the premises;

WHEREAS, the Fiscal Court of the County of Anderson has determined that an economic hardship exists within Anderson County and that the sale of alcoholic beverages by the drink for consumption on the premises could aid economic growth and development and tourism within Anderson County by making provision for the sale of alcoholic beverages by the drink at certain restaurants, dining facilities, hotels, motels, or inn,

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF ANDERSON, KENTUCKY, as follows:

SECTION 1 -----PURPOSE

It is the purpose of this Ordinance to promote economic growth, development, and tourism within Anderson County by making provision for the sale of alcoholic beverages by the drink at certain restaurants, dining facilities, hotels, motels, and inns consistent with the provisions of KRS 242.185 now in effect and as may be hereafter amended by the Kentucky General Assembly.

SECTION 2 ----GENERAL PROVISIONS

The provisions of the State Alcoholic Beverage Control laws contained in KRS Chapters 241, 242, 243, and 244 pertaining to licenses and regulations of the State Alcoholic Beverage Control Board, including definitions contained therein, as well as amendments and supplements thereto, are hereby adopted, except as otherwise lawfully provided herein.

SECTION 3----COUNTY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

- (A) The Anderson County Alcoholic Beverage Control Administrator (the "County ABC Administrator") shall be appointed by the County Judge-Executive with the consent of a majority of the members of the Anderson County Fiscal Court, and may be removed by the County Judge-Executive with or without cause. No conflict of interest shall be deemed to arise if the

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individual appointed as County ABC Administrator is also employed by Anderson County in some other capacity.

- (B) The salary for County ABC Administrator, if any, shall be fixed from time to time by the Fiscal Court.
- (C) The County ABC Administrator shall have full police powers of a peace office and his/her jurisdiction shall be coextensive with the boundaries of the County.
- (D) The County ABC Administrator is authorized to examine and inspect, at any reasonable time, all books and records required to be maintained by licensees under KRS 244.150. The licensee shall submit to the County ABC Administrator a copy of all reports, which the licensee is required or elects to submit to or file with the State Alcoholic Beverages Control Board.
- (E) The County ABC Administrator shall have the power and duty to suspend or revoke, for cause, a license granted for the purposes of KRS 242.185. The County ABC Administrator, on his/her own initiative or on complaint of any person, may institute proceedings to suspend or revoke any license issued under this Ordinance.

SECTION 4-----LICENSE

Under this section a license shall only be extended to the owners and/or operators of those establishments which qualify under KRS 242.185

- (A) Restaurants or dining facilities shall be eligible for the license for which provision is made herein if they comply with all of the following requirements:
 - (1) Such restaurants or dining facilities shall by records sufficient to establish to the County ABC Administrator that it derives a minimum of 51% of its gross revenues from the sale of food for consumption on the premises and has a minimum seating capacity of one hundred (100) persons at tables. The County ABC Administrator shall review all records which the applicant restaurant or dining facility must submit as a part of its application for a license, and the County ABC Administrator shall determine if said restaurant or dining facility meets the criteria contained herein.
- (B) Hotels, motels, or inns shall be eligible for the license for which provision is made herein if they comply with all of the following requirements:
 - (1) Such hotel, motel, or inn must demonstrate to the County ABC Administrator that it contains not less than fifty (50) sleeping units and has dining facilities for not less than one hundred (100) persons at

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tables. The County ABC Administrator shall personally inspect the premises and thereafter determine that, in fact, the applicant hotel, motel, or inn has the requisite number of sleeping units and dining facilities.

- (C) Nothing contained herein shall be in any way interpreted or construed to allow for the sale of alcoholic beverages by the drink for consumption on the premises in connection with any business in which a part of the commercial transaction consists of selling, at retail, staple groceries, or which is used solely as an entertainment facility and does not meet the criteria of a restaurant or dining facility set out hereinabove.

SECTION 5-----LICENSE APPLICATION

- (A) Representatives of restaurants, dining facilities, hotels, motels, or inns seeking the license for which provision is made herein shall submit a completed application to the County ABC Administrator. The form provided may be the same form utilized by the State Alcoholic Beverage Control Board.
- (B) Applicants for a license under this ordinance shall pay a license fee of Six Hundred Dollars (\$600.00) per fiscal year (July 1 - June 30). Any license issued after July 1 of any year shall be assessed a fee which is based on the pro rata portion of the remainder of the annual license period. However, the cost of any license shall not be less than Three Hundred Dollars (\$300.00).
- (C) The applicant for a county license, for which provision is made herein, shall tender with its application a consent document which shall state:

"The undersigned applicant hereby grants its irrevocable consent to the County ABC Administrator, or his duly appointed designee, to come upon and inspect and search the licensed premises at any reasonable time."

SECTION 6-----APPROVAL OF APPLICATION

Within thirty (30) days of the date of the application for an original county license, for which provision is made herein, and fifteen (15) days of the date of any application for renewal of such license, the County ABC Administrator shall, by mail or personal delivery, notify the applicant, in writing, of either the approval or the disapproval thereof or whether a hearing in regard thereto shall be held.

SECTION 7-----DENIAL OF APPLICATION

As is similarly set forth in KRS. 243.450, the County ABC Administrator shall not approve any application for a county license for which provision is made herein if:

- (A) The applicant, the application or the premises described therein do not fully comply with the provisions of this ordinance and all laws in regard to alcoholic beverages.
- (B) The applicant and any shareholder, officer, agent, servant, or employee has caused, permitted, or engaged in any act for which the revocation or nonissuance of a state, county or city license is authorized, including, but not limited to, those acts as defined by KRS 243.100, 243.450, 243.500, or 244.120.
- (C) The applicant and/or any shareholder, officer, agent, servant, or employee had a state license or county license which was revoked within two years of the date of application, where the premises or any portion thereof described in a state license, county or city license was revoked during such time.
- (D) Any statement or representation in the application is false.

SECTION 8-----SUSPENSION OR REVOCATION OF LICENSE

Notwithstanding the other provisions of this Ordinance, the licensee to whom a license provided for herein is issued shall abide by all federal, state, and local regulations governing the sale of alcoholic beverages by the drink, including but not limited to KRS Chapters 241, 242, 243, and 244. The failure to do so, in addition to other penalties which may be imposed by federal, state and local regulations, including those penalties contained herein, may result in the suspension or revocation of the license to sell alcoholic beverages by the drink. If a license provided for herein is suspended or revoked the licensee shall not be entitled to a refund of any portion of the license fee previously paid.

Any notice of suspension or revocation issued by the County ABC Administrator shall be in writing and shall state with specificity the reason for the suspension or revocation and shall inform the licensee of his/her right to a hearing pursuant to Section 9 of this Ordinance.

SECTION 9-----HEARINGS

Should a request for a hearing be made for the refusal to issue or renew a license or for the suspension or revocation of a license, the County ABC Administrator is to hold said hearing consistent with KRS Chapter 13B and pursuant to the general practice procedures found in the Kentucky Rules of Civil Procedure and the following shall apply:

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- (A) Requests for hearing should be made, in writing, within ten (10) days of the date of the notice of refusal to issue or renew or for suspension or revocation.
- (B) Definitions. All words are used as defined in the alcoholic beverage control law of Kentucky (KRS Chapters 241, 242, 243, and 244), unless otherwise specified.
- (C) Appearances. Any applicant or licensee may appear and be heard in person, or by duly appointed attorney, and may produce under oath evidence relative and material to matters before the Board.
- (D) Briefs. Briefs may be filed at the request of the County ABC Administrator, or at the option of the applicant or licensee.
- (E) Rules of Evidence. The rules of evidence governing civil proceedings in courts of the Commonwealth of Kentucky shall govern hearings before the County ABC Administrator; provided however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing.
- (F) Subpoenas. The County ABC Administrator shall have subpoena power for such hearings and shall, at the request of the applicant made with names and addresses of those desired, issue with subpoenas.
- (G) Transcripts. Upon request and at the cost of the applicant or licensee the hearing may be transcribed.
- (H) Decisions. All decisions shall be written and based upon evidence developed at the hearing.
- (I) Appeals from the County ABC Administrator. All appeals shall be held in accordance with KRS Chapter 241 and 243.

SECTION 10---EXPIRATION DATE OF LICENSE; RENEWAL

- (A) A license issued pursuant to this ordinance shall expire on June 30 of the year following the year in which the license was issued. Application for renewal of such license shall be submitted no later than thirty (30) days before expiration thereof and shall be made pursuant to Section 6 upon a showing the criteria therefore has been met, the filing and approval of a renewal application, and the payment of a renewal fee of Six Hundred Dollars (\$600).

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- (B) The renewal of the license issued pursuant to this ordinance 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.
- (C) No license issued under this ordinance shall be transferred or assigned either as to license or location except with the prior approval of the County ABC Administrator and not then until a payment of One Hundred Dollars (\$100) shall be made to the County.

SECTION 11----REGULATORY LICENSE

- (A) For the purpose of full reimbursement to the County of the cost of any police, regulatory, legal, or administrative expenses related to the sale of alcoholic beverages for which provision is made herein, a Regulatory License Fee is imposed on the gross receipts from retail sales of alcoholic beverages under each license issued. 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 county 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. Said license fee shall be five percent (5%) of all sales of alcoholic beverages by the drink for consumption on the premises.
- (B) The Fiscal Court shall adopt at the beginning of each budget period for each fiscal year such a percentage rate as shall be reasonably estimated to insure full reimbursement to the County for the cost of any additional policing, regulatory, or administrative expenses relating to this ordinance.
- (C) Payment of the Regulatory License Fee shall accompany tax returns approved for use by the County ABC Administrator, submitted to the County Clerk by the 20th day of each month for the preceding month's sales. There shall be a monthly credit of \$50, representing the pro rata portion of the initial license cost for which provision is made in this ordinance.
- (D) Failure to pay the monthly remittance within ten (10) days after the due date shall constitute a violation of this ordinance, and in addition, shall constitute grounds for an immediate thirty (30) day suspension of the license for which provision is made herein.

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SECTION 12----ADDITIONAL RESTRICTIONS ON SALE BY LICENSEE

At no time shall any licensee sell any alcoholic beverage when the licensee does not have food available for sale, and in no event may any alcoholic beverage be sold between the hours of 1:30 a.m. and 6:30 a.m., Monday through Saturday, nor between 12:00 a.m. (midnight) on Saturday and 6:30 a.m. on Monday.

SECTION 13----DORMANCY

- (A) It is necessary that a licensee actually conduct the business authorized by the license for which provision is made herein. Such is the intent of this section. Any license under which no business is transacted shall be declared dormant and shall become null and void after a period of ninety (90) days. At the expiration of the ninety (90) day period the license shall be surrendered to the County ABC Administrator.
- (B) Realizing that a licensee, like any other business, may have his/her business interrupted by situations not under his/her control, various exceptions to the dormancy rule have been included in this section under paragraphs (C) and (D).
- (C) 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 shall furnish to the County ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business prior to the expiration of the ninety (90) days of inactivity, for any of the reasons set forth herein, the County 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 thereunder within twelve (12) months from the date of notice to the County ABC Administrator. Such extension may not extend beyond the renewal day but may be for such times as the County ABC Administrator deems appropriate in exercise of his sound discretion.
- (D) All renewal licenses must be on file with the County ABC Administrator as provided for in Section 10 hereinabove except where the licensee is unable to continue in business at the same premises

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licensed during the preceding license prior due to construction, an act of God, casualty, death, the acquisition or threatened acquisition of these premises by any federal, state, city or other governmental agency or private corporation, possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; then said licensee shall file a written verified statement no less than thirty (30) days from the expiration date of the license, setting forth these facts, and the County 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 County 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.

SECTION 14----PENALTY

The sale of alcoholic beverages by the drink for consumption on the premises in Anderson County not in conformity with this ordinance shall constitute a violation, punishable by a fine of up to Five Hundred Dollars (\$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.

SECTION 15----SEVERABILITY

If a portion of this ordinance is declared null and void, the remaining provisions will remain in full force and effect.

SECTION 16----EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage, approval, attestation, and publication as required by law.

GIVEN FIRST READING ON THE _____ day of _____, 2007.

PUBLISHED in summary in the Anderson News on the _____ day of _____, 2007.

GIVEN SECOND READING, PASSED, ADOPTED AND APPROVED by the Fiscal Court of Anderson County, Kentucky, upon motion of Magistrate _____, seconded by Magistrate _____, at a duly convened meeting thereof held on the _____ day of _____, 2007 with yea and nay votes as follows:

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David Ruggles
Hubert Shields
Juretta Wells
Jason Denny
Larry Smith
John Wayne Conway
Steve Cornish

STEVE CORNISH
ANDERSON COUNTY JUDGE/EXECUTIVE

ATTEST:

LINDA EDINGTON
DEPUTY COUNTY CLERK

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