

# CITY OF BURKESVILLE

## ALCOHOL BEVERAGE CONTROL ORDINANCE

Ordinance No. 2016- 6

per the updated 2016 ABC Kentucky Revised Statutes adopted by the Kentucky General Assembly, and all accompanying revised applicable local, state and federal law.

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AN ORDINANCE TO THE CITY OF BURKESVILLE, KENTUCKY, ADOPTING WITH AMENDMENTS FOUND HEREIN, THE FOLLOWING SET OF REGULATIONS AND REQUIREMENTS FOR ALCOHOL BEVERAGE CONTROL, HEREIN AFTER TO BE KNOWN AS THE CITY OF BURKESVILLE "ALCOHOLIC BEVERAGE CONTROL ORDINANCE"; AND FURTHER ADOPTING ALL APPLICABLE AND REQUIRED KRS, INCLUDING BUT NOT LIMITED TO, KRS CHAPTERS 241 THROUGH 244 AS RECENTLY UPDATED BY THE GENERAL ASSEMBLY AND ADMINISTRATIVE AGENCIES; AND

WHEREAS, THE CITY OF BURKESVILLE, BY AND THROUGH A MAJORITY OF REGISTERED VOTERS, PERMITS THE PRESENCE OF ALCOHOL, MANUFACTURING OF ALCOHOL, AND SALES OF ALCOHOL WITHIN THE CORPORATE LIMITS OF THE CITY OF BURKESVILLE SO LONG AS SUCH IS DONE IN ACCORDANCE WITH ALL APPLICABLE LOCAL, STATE, AND FEDERAL LAW; AND

WHEREAS, THE CITY OF BURKESVILLE THEREFORE HAS ESTABLISHED UNIFORM REGULATIONS AND REQUIREMENTS FOR THE LICENSING AND REGULATION OF ALCOHOLIC BEVERAGES, MANUFACTURING, AND SALES PURSUANT TO AUTHORIZATION UNDER KRS CHAPTERS 241 THROUGH 244, AND ALL OTHER APPLICABLE LAW;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BURKESVILLE, KENTUCKY, THAT THE FOLLOWING REGULATIONS AND REQUIREMENTS ARE HEREBY ADOPTED AS SET FORTH BELOW:

#### **ARTICLE I. GENERAL**

- A. This Ordinance shall be known as the "Alcoholic Beverage Control Ordinance" of the City of Burkesville, Kentucky (hereinafter referred to as the city).
- B. The purpose of this Ordinance is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage manufacture and sales pursuant to authorization under KRS Ch. 241 through 244.
- C. 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 law (KRS Ch. 241 through 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.
- D. This Ordinance 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 of any other ordinance of the city, or of any statutes of the state relating to violations pertaining to alcoholic beverages.

- E. The provisions of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky (KRS Ch. 241 through 244) and all amendments and supplements thereto, are adopted so far as applicable to this Ordinance except as otherwise lawfully provided herein.

## ARTICLE II. LICENSE REQUIREMENTS

### A. City License:

For the privilege of causing, permitting and engaging in the actions, business, and transactions Authorized thereby in regard to traffic in alcoholic beverages in the city and pursuant to the authority of KRS 243.070, there is hereby established a corresponding city license for each of the state licenses described in KRS 243.070. The fee for each city license shall be as set out in the schedule set forth below. In the event KRS 243.070 shall hereafter be amended to authorize additional city licenses, the fee for each city license shall be the maximum fee provided in the statute as amended.

#### 1. Distilled Spirits Licenses as set forth in KRS 243.030.

a) Distiller's License	\$500.00
b) Rectifier's License	\$3,000.00
c) Wholesaler's License	\$3,000.00
d) Quota Retail Package License	\$840.00

2. Special temporary license, <i>per event</i>	\$136.50
3. Non-quota Type 1 Retail Drink License (includes distilled spirits, wine, and malt beverages)	\$2,000.00
4. Non-quota Type 2 Retail Drink License (includes distilled spirits, wine and malt beverages)	\$1,000.00
5. Non-quota Type 3 Retail Drink License (includes distilled spirits, wine and malt beverages)	\$300.00
6. Distilled Spirits and Wine Special Temporary Auction License, <i>per event</i>	\$200.00
7. Special Sunday Retail Drink License	\$300.00
8. Extended Hours Supplement License	\$2,000.00
9. Caterer's License	\$800.00
10. Bottling House or Bottling House Storage License	\$2,000.00
11. Malt Beverage License fees as follows:	
a) Brewer's License	\$500.00

b) Microbrewery License	\$500.00
c) Malt Beverage Distributor's License	\$200.00
d) Non-quota Retail Malt Beverage Package License	\$200.00
e) Non-quota Type 4 Retail Malt Beverage Drink License	\$200.00
f) Malt Beverage Brew-on-Premises License	\$100.00
12. Limited Restaurant License	\$1,050.00
13. Limited Golf Course License (includes distilled spirits, wine, and malt beverages)	\$1,050.00

**B. Certain Special Licenses defined:**

(Please note: The following is an updated/amended explanation and description of license types consistent with amendments made to KRS 243.070, which took effect June 25, 2013, and became enforceable thereafter via timetables set by the state ABC Administrative Office.)

**(1) Limited Restaurant License**

A Limited Restaurant License may be issued pursuant to KRS Chapter 243, if said restaurant meets the definition of a "Limited Restaurant" as set forth in KRS 241.010 (31) it is a facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, and which maintains seating capacity of either one hundred (100) or fifty (50) persons for dining. If the limited restaurant only maintains seating capacity for fifty (50) persons, it shall not have open bar and all alcoholic beverages shall be sold in conjunction with the sale of a meal. Distilled spirits, wine, and malt beverages shall be deemed to be purchased in conjunction with a meal if the distilled spirits, wine, and malt beverages are served after the meal is ordered and no more than one-half (1/2) hour after the meal is completed.

**(2) Limited Golf Course License**

A Limited Golf Course License may be issued pursuant to KRS Chapter 243 if an establishment meets the following conditions: a golf course with nine (9), or eighteen (18), holes that meets United States Golf Association criteria as a regulation golf course. A Limited Golf Course License shall authorize the license to purchase, receive, possess, and sell distilled spirits, wine, and malt beverages at retail by the drink for consumption on the licensed premise.

**(3) Non-quota Type 1 Retail Drink License**

A Non-quota Retail Drink License may be issued to the following pursuant to and defined by KRS: a Convention Center or a Convention Hotel Complex; a Horse Racetrack; an Automobile Racetrack; a Railroad System; a Commercial Airlines System or Charter Flight System.

**(4) Non-quota Type 2 Retail Drink License**

A Non-quota Retail Drink License may be issued pursuant to and as defined in KRS for the following: a Hotel that contains at least fifty (50) sleeping units, contains dining facilities for at least one hundred (100) persons, and receives from its total food and beverage sales at least fifty percent (50%) of its gross receipts from the sale of food; a Restaurant with a minimum seating for fifty (50) consumers at tables; an Airport; or a Riverboat.

(Please note: A Restaurant holding a Non-quota Type 2 Retail Drink License which has seating for more than fifty (50), but less than one hundred (100), consumers at tables may only purchase, receive, possess, and sell wine and malt beverages at retail by the drink for consumption on the licensed premises.

(5) Non-quota Type 3 Retail Drink License

A Non-quota 3 Retail Drink License may be issued pursuant to and defined by KRS to the following: a Private Club in existence for longer than one (1) year prior to the license application; a Dining Car.

(Please Note: A Non-quota Type 3 Retail Drink License issued to a Private Club shall authorize the licensee to exercise the privileges of a Non-quota Type 2 Retail Drink License at the designated premises if the general public is excluded.)

(6) Non-quota Type 4 Retail Malt Beverage Drink License

A Non-quota Type 4 Retail Malt Beverage Drink License may be issued pursuant to and as defined in KRS to the following: a holder of a quota retail drink license; a holder of a microbrewery license; a holder of a small farm winery license; and any other business wishing to sell malt beverages by the drink for consumption on the premises only. A Non-quota Retail Malt Beverage Drink License shall not be issued to any premises from which gasoline and lubricating oil are sold, or from which the servicing and repair of motor vehicles is conducted, *unless* there is maintained in inventory for sale on the premises at retail not less than five thousand dollars (\$5,000) of food, groceries, and related products valued at cost.

(7) Special Temporary License

A Special Temporary License may be issued only as set forth in KRS 243.260. Such a license may be issued to any regularly organized Fair, Exposition, Racing Association, or other party all as defined in applicable KRS. This license shall authorize the licensee to exercise the privileges of a Quota Retail Drink Licensee *and* a Non-quota Type 4 Malt Beverage Drink Licensee at designated premises for a specified and limited time, which shall not exceed thirty (30) days and which shall expire when the qualifying event ends. All restrictions and prohibitions applying to a distilled spirits and wine Quota Retail Drink License or a Non-quota Retail Malt Beverage Drink License shall apply also to a Special Temporary Licensee as described in this section.

(OPTIONAL if county chooses to allow distilled spirits drink sales under a temporary license) (E) The Burkesville City Counsel, pursuant to KRS 243.072, finds that an economic hardship exists, and that it would aid economic growth and provide community activities encouraging business opportunities if distilled spirit and wine sales by the drink were available as part of a special event license.

The ABC Administrator shall only issue one Special Temporary License per event. All sales are required to be served in colored plastic or styrofoam container, other than original.

No licensee shall offer distilled spirits and wine for sale at any time between 12:00 Midnight on Saturday and 6:00 a.m. on Monday

C. Expiration of License; Proration of Fees:

All city licenses, except temporary licenses, shall begin on February 1st of any year and shall expire on January 31st of the following year. Any licenses issued after July 31st 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.

D. Payment of License Fees; Delinquency:

No licensee shall enter into or begin operating any business for which a license is required by this chapter 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, shall cease all sales in alcoholic beverages and to other penalties as provided in this Ordinance.

E. Refund of Fees:

(1) Should any licensee under this Ordinance 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.

(2) In the event a violation of this Ordinance 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.

### ARTICLE III. CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

#### 1. Alcoholic Beverage Control Administrator

(a) Pursuant to KRS 241.160, there is hereby created the duties of the City of Burkesville Alcoholic Beverage Control Administrator.

(b) The Mayor of Burkesville appoints <sup>Officer</sup> Lawrence Nettles an employee of the City of Burkesville to serve as the City Alcohol Beverage Administrator, pursuant to KRS 241.170.

(c) The City Alcohol Beverage Administrator may from time to time appoint such additional personnel, such as Alcohol Beverage Control investigator(s), as is necessary to assist him or her in the administration of this ordinance.

(d) The functions of the City ABC 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 ABC Board) with respect to state licenses and regulations, except that no amendment to this Ordinance may be less stringent than the statutes relating to Alcoholic Beverage Control, or than regulations of the ABC Board. No amended or additional regulation shall become effective until the City Council has first appropriately approved it by adopting an amendment to this Ordinance as required by law.

(e) To prevent potential conflicts of interests, no person shall be a City ABC Administrator, an investigator, or an employee of the city, under the supervision of the City ABC Administrator, who would be disqualified to be a member of the ABC Board under state law set forth in KRS 241.100.

(f) The City ABC Administrator shall have authority delegated by the Mayor, and as authorized under KRS Ch. 241 through 244. The City ABC Administrator, along with any designated City ABC Administration investigator(s) shall have full police powers of law enforcement, and their jurisdiction shall be co-extensive with the boundaries of the City. They, along with the City of Burkesville law enforcement may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant.

(g) Should the City ABC Administrator, or the designated ABC Administration investigator(s) at any time have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any stockholder, agent or employee of a licensed corporation, LLC or other business organization, has a criminal record, they shall have the authority to require such person to appear in person at the Burkesville Police Department for the purpose of having his or her fingerprints taken.

(h) The City ABC administrator and his investigators shall have available at all reasonable times for their inspection all books and records required to be maintained by licenses under KRS 244.150 and the City ABC Administrator shall receive copies of all reports submitted by licensee to the State Alcoholic Beverage Control Board.

(i) The City ABC Administrator, before entering upon his or her duties, shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00). Any employee delegated or assigned to the ABC Administration may also be asked to execute a similar bond in such penal sum as the City deems necessary unless said person is already covered under the City's active bonds as required under KRS in regards to officials and employees of the City.

## 2. Appeals

(a) Appeals from the orders of the City ABC Administrator may be taken to the state ABC Board by filing with the Board within thirty (30) days a certified copy of the orders of the City ABC Administrator. The Board shall hear matters at issue as upon an original proceeding. Appeals from orders of the City ABC Administrator shall be governed by KRS Chapter 13B.

(b) When any decision of the City ABC Administrator shall have been appealed, or when a protest has been lodged against an application for any license within the city, and the ABC Board shall have made a decision regarding such appeal or protested application, the City ABC 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 provided by law, and as used herein, no order of the ABC Board is final until all appeals or appeal times shall 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, 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.

## **ARTICLE IV. APPLICATION AND MATINENANCE OF LICENSE**

### **1. Advertisement**

Before an application for a license shall be considered, the applicant must publish a notice of its intent to apply for an alcoholic beverage license in a newspaper meeting the requirements of KRS Ch. 424, including the following:

(a) The advertisement shall state the name and address of the applicant. It shall state 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 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.

(b) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication is provided in KRS 424.170.

### **2. Application Fee**

A nonrefundable application fee of fifty dollars (\$50.00) shall be paid with the filing of the application for a city license. If the license is granted, the application fee shall be credited against the initial license fee.

### **3. Form of Application**

(a) All licenses granted under this chapter shall be approved by the City ABC Administrator. Applications for the issuance of new licenses and for renewals of existing licenses shall be in writing and upon the forms provided by the Kentucky ABC Board and/or the City of Burkesville, both of which may be amended and supplemented from time to time by each respective agency.

(b) The application shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought, as required by the Kentucky Revised Statutes, the state ABC Board, and the City of Burkesville, including as follows:

(1) Name and address;

(2) Nature of interest;

(3) Whether or not a citizen of the United States;

(4) Date of birth;

(5) Date of residence was established in Kentucky, if a resident of Kentucky.

(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.

(c) Each application shall be accompanied by a certified check, cashier check, or money order for the amount of the license fee, less the fifty dollars (\$50.00) application fee.

(d) In addition to the above specified information, the applicant shall file, with the application, responses to any additional questions as may be posed or prescribed by the City ABC Administrator. The City Council has adopted a statement of guidelines and priorities for the issuance of licenses within this Ordinance to determine the extent to which applications may further, or impede, the objectives of those guidelines. Therefore, in addition to the information contained in the application, the City ABC Administrator may require such other information as the Administrator may, in his or her discretion, deem desirable, reasonable, or appropriate to the consideration of the application.

#### 4. Other Conditions

In addition to any other inquiries, conditions or considerations required or permitted by law:

(a) The City ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until the applicant and his or her place of business shall have been approved by a licensed building inspector, and any and all other inspections required by the Kentucky Building Code or other applicable law;

(b) 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

(c) No license to sell alcoholic or malt beverages may be granted or renewed to any person who is delinquent in the payment of any property taxes, both real and personal, any other taxes due to the City, fees of any type, or charges due to any department of the city at the time of issuing the license, nor may any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any of the above delinquent payments due and owing to the City. Further, if a licensee becomes delinquent in the payment of any of the above at any time during the license period, the license to sell alcoholic or malt beverages may be subject to revocation or suspension.

(d) No person, whether 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 the City's 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 division 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 the 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 Ordinance. Nothing in this Ordinance shall 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.

#### **5. Form of License**

All city licenses shall be in such form as may be provided by the ABC Administrator, but at the least per state law shall contain:

- (a) The name and address of the licensee;
- (b) The number of the license;
- (c) The type of license;
- (d) A description by street and number, or otherwise, of the licensed premises;
- (e) The name and address of the owner of the building in which the licensed premises are located;
- (f) The expiration date of the license;
- (g) 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.

#### **6. Change of Information**

(a) If after a license to individuals or to a sole proprietor has been issued, there is a change in any fact required to be set forth in the application, a verified amendment in writing giving notice of the change shall be filed with the City ABC Administrator with ten (10) days of the change.

(b) Since a number of licenses issued by the city are in the name of corporations or other business organizations, 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, the word "change" is construed to include any change in managers, partners or LLC members, 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 shall 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 citizen of the United States;
- d. Date of birth;
- e. Date residence was established in Kentucky, if a resident of Kentucky. If a Somerset resident, indicate when residence was established;
- f. Whether or not he or she has any interest in any other license or in any LLC, corporation, partnership or other business organization holding a license under this act;
- g. Extent of stock or company ownership;
- h. Whether or not he or she has any interest in any license or in any 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.

#### **7. Renewal of License**

(a) Every year, except in the case of the 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 or threatened 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 existing lease; provided that said licensee 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.

(b) 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.

#### **8. Lost or Destroyed License.**

When a license shall be lost or destroyed without fault on the part of the licensee or his or her 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.

#### **9. Revocation or Suspension.**

- (a) Any license may be revoked or suspended by the City ABC Administrator if the licensee shall have violated any of other provisions of KRS Ch. 241 thru 244, or any rule or regulation of the ABC Board, or of the Kentucky 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 Ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale, and transportation, or taxation, of intoxicating liquors, or any rules or regulations of the city heretofore in existence or authorized by the terms of KRS Ch. 241 through 244 to be created, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed is disobedience of his or her instructions, or any such license may be revoked or suspended for any cause which the City ABC Administrator in the exercise of his or her sound discretion deems sufficient.
  
- (b) 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.
  
- (c) 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 or her 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 through 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 Ordinance, or acts of Congress relative to taxation or for a violation of any rules or regulations of the Kentucky Department of Revenue made in pursuance thereof.
  
  - (5) Setting up, conducting, operating or keeping, on the licensed premises, any gambling game, device, machine or contrivance, or lottery 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, lottery, gift enterprise, handbook or facility.

## 10. Proceedings for Revocation or Suspension of License

(a) 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.

(b) The specific procedures to be followed in hearings on actions for revocation or suspension shall be those set out in the Kentucky Administrative Procedure Act (KAR Chapter 13B).

(c) A decision of the City ABC Administrator revoking or suspending a license may be appealed as provided in KRS 243.550.

(d) 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 or her 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 or her officers to take physical possession of the license and return it to the City ABC Administrator.

(e) 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 or her stock of alcoholic beverages to an appropriate entity.

(f) 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.

(g) 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 or her 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.

## 11. Transfer or Assignment

No license issued under this chapter shall be transferred or assigned either as to licensee or location except with prior approval of the City ABC Administrator and not then until a payment of one hundred dollars (\$100.00) shall be made to the City ABC Administrator.

## **12. Refusal of License; Guidelines for Approval of Quota Licenses**

(a) The City ABC Administrator may refuse to issue a license for any of the following reasons:

(1) Causes for refusal to issue or renew a license and for suspension or revocation of a city license shall be the same as provided for state licenses according to KRS 243.450, 243.490 and 243.500, as well as violation of any city ordinance regarding alcohol beverage licensing, sales or the administration thereof.

(2) If the applicant has done any act for which a revocation of license would be authorized under local, state, or federal law; or

(3) If the applicant has made any false material statement in his or her application.

(b) 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.

## **13. Review of License; Books, Records and Reports**

(a) Applicants to whom a license is issued pursuant to this chapter 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 chapter. In the event the conditions of any license 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.

(b) Every licensee under this Ordinance 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.

(c) For the purpose of assisting the City ABC Administrator in enforcement of this Ordinance, every licensee required to report 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.

## 14. Dormancy

(a) 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 or her business interrupted by situations not under his or her control, various exceptions to the dormancy rule have been included in this section.

(b) 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 division (c) 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.

(c) The provisions of division (b) 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 or her sound discretion.

## ARTICLE V. HOURS FOR SALE AND DELIVERY

### 1. Hours for Sale and Delivery

(a) A licensee for distilled spirits, wine and/or malt beverages 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) Monday – Saturday; *and between the hours of 1:00 p.m. until 10:00 p.m. on Sundays.* Said licensee shall not be permitted to sell or dispense distilled spirits, wine and/or malt beverages after the hours of 12:00 a.m. (midnight on Saturday); before 1:00 p.m. until 10:00 p.m. on Sunday with the noted exceptions below:

1. A licensee may sell and dispense distilled spirits, wine, and/or malt beverages on New Year's Eve until 2:00 a.m. on January 1, regardless of the day of the week on which New Year's Eve occurs; provided that, the appropriate licenses have been obtained from both the City and the State ABC Board.
2. All delivery of alcoholic beverages in the City shall be made between the hours of 6:00 a.m. and 12:00 midnight, Monday through Saturday. No delivery shall occur on Sunday.

## **ARTICLE VI. CONDITIONS, PROHIBITIONS AND RESTRICTIONS**

### **1. Gambling**

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 device of chance is prohibited and shall not be kept on such premises.

### **2. Radio Receiving Apparatus**

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 Pulaski 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 or her designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

### **3. Security**

The licensee shall be responsible for maintaining security on his or her 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.

### **4. Prizes Prohibited**

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.

### **5. Drunkenness**

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.

### **6. Underage Sales**

The licensee shall not sell or dispense alcoholic beverages to any person who is under 21 years of age. The licensee shall check all photo ID's to ascertain that every person attempting to purchase or consume alcoholic beverages is at least 21 years of age.

### **7. Sign Requirements-Notice to Persons Under the Age of Twenty-One (21)**

Per state law, the licensee shall display at all times in a prominent place a sign at least 8" x 11" in thirty (30) point or larger type font 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.

### **8. License to be Displayed**

(a) Pursuant to the requirements set forth in KRS 243.895, 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.

(b) The licensee shall post in a prominent place easily seen by patrons a printed sign at least 11" x 14" 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 Kentucky Cabinet for Health and Family Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects. A person who violates this section shall be subject to a fine of not less than ten dollars (\$10.00), nor more than fifty dollars (\$50.00).

### **9. Legal Transactions for Wholesalers, Distributors and Retail**

No wholesaler or distributor shall sell any alcoholic beverages to any person in the city for any consideration except under the casual credit or cash 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 cash at time of purchase.

### **10. Employment Restrictions**

No licensee shall knowingly employ in connection with his or her business any person who:

- (a) Has been convicted of any felony within the last two (2) years;
- (b) 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;
- (c) 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, unless said

person is exempt or permitted under certain circumstances as set forth in KRS and/or the state and local ABC Regulations;

(d) Within two (2) years prior to the date of his or her employment, has had any city license under this chapter revoked for cause.

### **11. Happy Hour Restrictions**

Licensees shall not offer reduced drink specials (e.g. two-for-one, happy hours) before 4:00 p.m. Monday through Saturday, nor after the hour of 8:00 p.m. Monday through Saturday.

### **12. Lavatory Facilities Required**

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.

### **13. Nudity and Adult Entertainment Activities Prohibited**

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. Note: *Also see "An ordinance establishing regulations for sexually oriented businesses within the city of Burkesville". Ordinance Number \_\_\_\_\_.*

### **14. Drive-Through Outlets Prohibited**

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 package 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.

### **15. Cause for Revocation**

Violation of this Article shall subject the licensee to penalties provided in this Ordinance and shall be cause for revocation of license.

## **ARTICLE VII. MINORS**

### **1. Possession by Minors Prohibited; No Person Shall Aid Possession by Minors**

(a) Except as specifically authorized under KRS Ch. 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.

(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 division (b) 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.

(c) No person shall knowingly permit, aid, assist, induce, cause or otherwise encourage any minor to be in possession of, use or consume alcoholic beverages. All licenses, as set out in this Ordinance, shall require proof of age of all persons attempting to purchase or consume alcoholic beverages on the licensee's premises.

(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.

(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 use of alcoholic beverages, or that the minor individuals' possession of alcoholic beverages was exempted by KRS 244.087.

## **ARTICLE VIII. CONSUMPTION ON PREMISES PROHIBITED**

### **1. Consumption on Licensed Package Premised Prohibited**

No licensee of a package store, whether trafficking in distilled spirits, wine or malt beverages, shall permit consumption of alcoholic beverages on the premises. The licensee shall post a prominent notice on the premises stating that consumption of alcoholic beverages on premises is prohibited.

### **2. Exceptions**

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

### **3. Habitual Congregating**

(a) Licensed Premises. 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.

(b) *Vacant Property*. 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.

(c) It shall be a defense to any prosecution under Article VIII, if a licensed vendor or property owner shall permit the City of post and maintain a legible, painted or 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 persons is prohibited and that violators shall be prosecuted for trespass pursuant to KRS 511.080.

#### 4. Definitions

In addition to the definitions contained in KRS 241-244, as used in this Article, 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.

### ARTICLE IX. MALT BEVERAGE KEG REGISTRATION

#### 1. Definitions

As used in this section, "Keg" is defined as a container designed and capable of holding six (6) or more gallons of malt beverage.

#### 2. Malt Beverage Keg Identification Tag

All retail licensees (herein after referred to as "licensee") operating within the City of Burkesville who sell malt beverages in kegs for consumption off the premises of the licensee shall attach a numbered identification tag or other device as provided by the city to each keg at the time of sale and shall require the purchaser to complete and sign a keg registration form for the keg stating the following:

- (a) The purchaser is of legal age to purchase, possess and use the malt beverage;
- (b) The purchaser is not purchasing the keg for resale and will not allow any person under the age of twenty-one (21) to consume the malt beverage;
- (c) The purchaser will not remove, obliterate or allow to be removed or obliterated the identification tag;

(d) The purchaser will state the property address where the keg will be consumed and physically located; and

(e) The purchaser is aware of his/her duty to maintain a copy of the keg registration form visible and readily accessible from the location of the keg.

### **3. Keg Registration**

(a) The licensee shall obtain the name, address and telephone number of the purchaser and shall require the purchaser to produce a valid driver's license number and, if that is not available, to produce at least one other valid form of identification.

(b) The licensee shall retain copies of the keg registration forms for a period of one year and shall make the keg registration form available for inspection by state and local alcoholic beverage control officers and other enforcement officers.

(c) The keg registration form shall be forwarded to the city within five (5) working days in all situations when the keg is not returned or is returned with the identification tag removed or obliterated.

(d) The city is authorized to develop appropriate rules and regulations and to develop and make available forms for the identification tags and keg registration forms.

(e) All licensees that sell or offer for sale kegs shall post on the licensed premises a notice provided by the city concerning the provisions of this section.

### **4. Unlawful Sales**

It shall be unlawful for any licensee to sell or offer for sale kegs without the identification tags attached and the keg registration form completed. It shall also be unlawful for any person to remove or to obliterate the identification tag or to fail to have the declaration form visible and readily accessible from the location of the keg. The penalties for violation of this section shall be the penalties as set out in this Ordinance. In addition, licensees violating this section shall be subject to appropriate alcoholic beverage control administrative remedies.

## **ARTICLE X. ENFORCEMENT**

### **1. Enforcement**

City police officers and the City ABC Administrator and his/her Investigator(s) are hereby authorized to enforce this Ordinance in full.

*NOTICE: Under the authorization of KRS 241.090, City of Burkesville Police Officers, the City ABC Administrator, and the assigned Investigator's for the City's ABC Administration, are not required to obtain search warrants for inspections upon the licensed facilities or any living quarters accessible by the licensed facility. This includes but is not limited to the review of any video or audio recordings of the licensed facility.*

## **ARTICLE XI. PENALTIES**

### 1. Penalties

(a) In addition to any criminal prosecution instituted in Cumberland 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 remitted to the City ABC Administrator, who shall then transmit the fines to the City Clerk for deposit in the appropriate designated account.

(b) Any person, firm or corporation who violates any of the provisions of this chapter, for which no other penalty is hereby provided, shall be guilty of a Misdemeanor, and subject to prosecution in the Cumberland County Court System, as follows: for the first offense, be fined not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or imprisoned 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 for the violation may be imprisoned.

## ARTICLE XII. MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

### 1. Mandatory Responsible Beverage Service Training

(a) All persons employed in the selling and/or serving of alcoholic beverages shall participate in and complete the Kentucky S.T.A.R. program.

(b) All persons required to complete training under division (a) 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.

(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 as described herein.

(d) All persons completing the training required by this section shall be re-certified not less than once every three (3) years thereafter.

## ARTICLE XIII. SIGNS AND ADVERTISING.

### 1. Signs and Advertising

(a) All signage shall be in compliance with any and all other existing rules, regulations, and Ordinances of the City of Burkesville, including but not limited to, the Planning and Zoning Ordinance as currently enacted, and/or as may be amended in the future.

(b) No flashing lights shall be used to illuminate the exterior of any premises licensed under this Ordinance.

(c) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130 and regulations promulgated thereunder.

(d) No licensee shall publish or display advertising that is false or misleading, nor shall any licensee publish or display advertising that implies that consumption of alcoholic beverages is fashionable or the accepted course of behavior, or advertising that contains any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, whether or not any known athlete is depicted or referred to, nor shall any licensee publish or display advertising that encourages intoxication by referring to the intoxicating effects of alcohol (or the use of terms such as "high test", "high proof" or "extra strong") or depicting activities that tend to encourage excessive consumption.

(e) No licensee shall erect or allow to be erected any banner that displays any particular brand of alcoholic beverage on the outside of the building or on the property.

(f) Any off premises signage advertising the sale of alcoholic beverages is prohibited. It shall be unlawful to attach signage advertising alcoholic beverages to the exterior of the building or the exterior premises of the business. This prohibition shall include the use of outdoor umbrellas or other outdoor or patio fixtures that feature the name or logo of an alcoholic beverage or manufacturer of alcoholic beverages.

(e) Signage which refers directly or indirectly to alcoholic beverages will be limited to one (1) sign not over two (2) square feet that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of displaying advertising which refers either directly or indirectly to alcoholic beverages shall be displayed on, nor shall it be visible from the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business cards not larger than two and one-half inches (2-1/2") in size, setting forth the price at which the licensee offers alcoholic beverages for sale.

(f) It shall be unlawful for a licensee under this chapter to distribute or cause to be distributed any handbills, circulars, or cards as a medium of advertising alcoholic beverages.

(g) No licensee shall advertise alcoholic beverages on any municipally owned property or at any municipally sponsored event.

## **ARTICLE XIV. PATIO AND OUTDOOR SALES**

### **1. Patio and Outdoor Sales Regulations**

(a) Patio and outdoor sales of alcoholic beverages shall be permitted only on premises licensed for sales of alcoholic beverages by the drink.

(b) No licensee shall offer alcoholic beverages for sale in a patio or outdoor area of the licensee's premises except in a clearly defined patio or outdoor area that is enclosed by a fence or other

screening, not less than four (4) feet in height. All outdoor areas and screening shall be subject to the approval of the City ABC Administrator. An exception to this restriction may be granted for seasonal sidewalk cafes, upon application to and authorization from the ABC City Administrator. The permission to operate a sidewalk café shall be governed by the provisions of this article and shall be subject to the regulation of local zoning authorities as well as codes enforcement and public safety officers.

(c) No licensee shall offer patio or outdoor sales of alcoholic beverages unless the patio or outdoor area and fencing or screening area shall have been approved in advance by the ABC Administrator.

(d) Unless exempted by the following provisions of this Ordinance, and by permission of the City ABC Administrator, patio areas must comply with the screening requirements of this Ordinance. Sidewalk café seating areas must comply with this Ordinance and with local zoning laws and other public safety requirements noted in this Ordinance, or in other local ordinances, statutes or regulations.

## **2. Exception(s) to Screening Requirements for Outdoor Sales and Service of Alcoholic Beverages, Specifically, Permitted Sidewalk Cafes in the City's Downtown Business Area.**

(a) Licensees in the downtown business district/area may request an exception from the outdoor screening of patio provision in order to permit seasonal sidewalk cafes that serve food and alcoholic beverages as an adjunct to the primary and adjacent licensed premises. In the case of permitted sidewalk cafes, they shall be deemed part of the licensed premises.

(b) Any food establishment which operates a restaurant and is licensed under this Ordinance and the provisions of the state ABC code, may, upon application to the local ABC Administrator, ask permission to expand the operation of that restaurant onto a part, and only that part, of the public sidewalk which immediately adjoins the licensed premises (hereinafter referred to as "sidewalk café"). Licensees who do not serve food shall not be eligible to apply for a sidewalk café permit.

## **3. Conditions for Sidewalk Café Permit**

The issuance of a permit shall be subject to the following conditions and restrictions; provided, however, that the ABC Administrator may without adverse hearing procedures impose additional reasonable restrictions or withdraw approval upon the operation of any sidewalk café where necessary in the judgment of the said Administrator to protect the public health, safety or welfare or to prevent a nuisance from developing or continuing:

(a) No sidewalk café shall be permitted in any portion of the public sidewalk where normal pedestrian traffic flow is obstructed. A minimum clearance width of thirty-six (36) inches must be maintained on the public sidewalk at all times. The sidewalk café shall not be permitted in any manner to obstruct the entrance/exit to the restaurant.

(b) No tables, chairs or any other furnishings, except plant tubs, shall be placed in the area used for the sidewalk café during any period when the sidewalk café is not open and being operated. They shall be removed at the end of each business day at the hour specified in the permit. Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved Permit. While such café is in operation, all tables and chairs shall be kept in a clean, sanitary condition.

- (c) The use of a portion of the public sidewalk as a sidewalk café shall not be an exclusive use. All public improvements, including but not limited to, trees, light poles, traffic signals, pull boxes or manholes, or any public-initiated maintenance procedures, shall take precedence over said use of the public sidewalk at all times.
- (d) The licensee shall, in addition to all other requirements of law, take reasonable steps to insure that alcoholic beverages are consumed only by patrons of the establishment who are of age, and not by passersby or persons who are not of age or who are obviously or apparently intoxicated.
- (e) No disposable cups or drinking vessels may be used and the licensee shall not permit any alcoholic beverages to be taken off premises by patrons, customers or guests.
- (f) No amplified sound shall be used within a sidewalk café. At no time shall any music originating from any part of the premises create a nuisance.
- (g) Dancing shall not be permitted or allowed in the sidewalk café;
- (h) The licensee must at all times comply with all federal, state and local laws regarding the sale, service and consumption of alcohol and the operation of the premises;
- (i) The permit for sidewalk café may not be assigned or transferred.

#### **4. Other Requirements Applicable to Sidewalk Cafes**

No sidewalk café permit shall be effective unless the licensee has filed with the ABC Administrator evidence of insurance, insuring the licensee against liability imposed by law arising out of the ownership, maintenance or operation of such sidewalk café, in an amount to be established by the City Attorney and the City's Safety Coordinator. The city shall be named an additional insured in the policy required. Such insurance policy shall further provide expressly that it may not be canceled except upon ten (10) day's written notice (or more) filed with the ABC Administrator and the City Attorney.

### **ARTICLE XV. IMPLEMENTATION OF ORDINANCE PROVISIONS; SEVERABILITY**

#### **1. Implementation of Changes in Ordinance Provisions**

The Burkesville City Council may promulgate rules and regulations, and/or amendments thereto, as is in its discretion in order to ensure the proper implementation of this Ordinance. Such will be done as according to local, state, and federal law.

#### **2. Severability**

If any section of this Ordinance, including but not limited to, any section, subsection, paragraph, sentence, clause, phrase, or any other portion of this Ordinance, is declared illegal or unconstitutional, or otherwise invalid by a Court of competent jurisdiction, such declaration shall not affect the remaining portions hereof.

**3. Effective Date of Ordinance Provisions**

The Ordinance shall take effect immediately after its Passage and Publications as required by law.

FIRST READING: 8/18/2016

SECOND READING: 9-1-2016

APPROVED: *Keith Riddle*  
KEITH RIDDLE, MAYOR

ATTEST: *Brenda Spears*  
BRENDA SPEARS, CITY CLERK