

CITY OF BURNSIDE

ALCOHOL BEVERAGE CONTROL ORDINANCE

Updated to reflect the 2012-2013 ABC Kentucky Revised Statutes adopted by the Kentucky General Assembly, and all accompanying revised applicable local, state, and federal law.

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ALCOHOL
BEVERAGE CONTROL

ORDINANCE NUMBER 412.0

AN ORDINANCE TO THE CITY OF BURNSIDE, KENTUCKY, ADOPTING WITH AMENDMENTS FOUND HEREIN, THE FOLLOWING SET OF REGULATIONS AND REQUIRMENTS FOR ALCOHOL BEVERAGE CONTROL, HERIN AFTER TO BE KNOWN AS THE CITY OF BURNSIDE'S "**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 ADMINISTRTRIVE AGENCIES; AND

WHEREAS, THE CITY OF BURNSIDE, 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 BURNSIDE SO LONG AS SUCH IS DONE IN ACCORDANCE WITH ALL APPLICABLE LOCAL, STATE, AND FEDERAL LAW; AND

WHEREAS, THE COMMON COUNCIL OF THE CITY BURNSIDE HAS DETERMINED THAT AN ECONOMIC HARDSHIP EXISTS WITHIN THE CITY OF BURNSIDE, AND PURSUANT TO KRS CHAPTER 243.072, THE SALE OF ALCOHOLIC BEVERAGES BY THE DRINK COULD AID ECONOMIC GROWTH; AND

WHEREAS, THE CITY OF BURNSIDE 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 BURNSIDE, 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 Burnside, 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 Chapters 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 Commonwealth of Kentucky 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.
- F. Ordinance No 410.0 titled an Ordinance regulating the sale of alcoholic Beverages in Burnside Kentucky dated January 12, 2004 as amended in Ordinance No.410a, dated May 7, 2007; 410b, dated October 12, 2009; 410c, dated November 16, 2012; 410d, dated January 7, 2013 and 411.0 dated January 7, 2008 are repealed.

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 and Wine License fees.

The following distilled spirits and wine licenses may be issued by the City. The fees for each shall be as follows, *per annum*, unless otherwise noted:

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, *per event* \$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. Caterer's License	\$800.00
9. Bottling House or Bottling House Storage License	\$1,000.00
10. Malt Beverage License fees as follows:	
(a) Brewer's License	\$500.00
(b) Microbrewery License	\$500.00
(c) Malt Beverage Distributor's License	\$400.00
(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
11. Limited Restaurant License	\$1,000.00
12. Limited Golf Course License (includes distilled spirits, wine, and malt beverages)	\$1,050.00

B. Licenses Types defined:

(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)(a). A Limited Restaurant for purposes of this section is defined as follows: 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, which maintains seating capacity of *one hundred* (100) persons for dining, which is located in a wet or moist territory under KRS 242.1244(2). All license holders of a "Limited Restaurant Alcoholic Beverage By the Drink License" shall be required to maintain food service during all hours that alcohol is served.

(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 licensee 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 at least 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 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. This shall not apply to any licensed premises that sells no fuel other than marine fuel.

(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 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 Non-quota Retail Malt Beverage Drink License shall apply also to a Special Temporary Licensee as described in this section.

C. Expiration of License; Proration of Fees:

All city licenses, except temporary licenses, shall begin on May 1 of any year and shall expire on April 30 of the following year. Any licenses issued after November 31 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 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 the 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.

F. Regulatory License Fee:

- (1) Pursuant to KRS 243.075, there is hereby imposed a Regulatory License Fee on the gross receipts of sale of alcoholic beverages of each licensee who has a local license issued by the City ABC Administrator. The City's Regulatory License Fee shall be five percent (5 %) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the Regulatory License Fee shall be five percent (5 %) of gross sales. The Regulatory License Fee shall be four percent (4 %) on gross retail sales of package malt beverages.

Please note: the City Council may adopt with the budget for each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the city for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the city. Should the city fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed in this ABC Ordinance until such time as the City Council shall adjust the fee.

- (2) Payment of said regulatory fee shall be remitted to the City Clerk, or his/her designee, for deposit into the appropriate designated account. The City may use said fees as permitted by law, including but not limited to, any cost of additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other fees or licenses permitted by law pursuant to KRS 243.070. Payment of the regulatory license fee shall be based on paperwork required by the local and/or state ABC Administrator, which may include but is not limited to tax returns and financial statements. Said paperwork and payment will be due according to the schedule set forth by the City ABC Administrator, which may be set at, but is not limited to, time periods consisting of monthly billing by the local ABC office and/or the City of Burnside. Payment of such fees shall accompany forms approved for use by the ABC Administrator and shall include a tabulation of both gross food sales and alcohol sales for the preceding month if the type of license is one in which the licensee is required to meet a food sales

requirement. The forms and payment shall be submitted to the City Clerk by the twentieth (20th) day of each month for the preceding month's sales. The fraction, represented by one divided by the number of months for which the City license was issued, of any fees required under the provisions of this chapter shall be deducted each month as a credit.

- (3) Failure to pay such remittance within ten (10) days of the due date constitutes a violation and shall subject a licensee to suspension or revocation. In addition to the monetary penalty, the City Alcoholic Beverage Control Administrator shall hold a hearing for a second and third offense requiring the licensee to show cause why the license should not be suspended or revoked with full authority to do so upon appropriate findings. The calculation of the number of offenses for the purposes of invoking the above penalties shall be done on a twelve (12) month basis, with the number of offenses being reduced to zero at the beginning of each new license period.
- (4) Penalty for failure to file a return and pay remittance by the due date is five percent (5%) of the regulatory fee for each ninety (90) days or fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the regulatory fee; provided, however, that in no case shall the penalty be less than ten dollars (\$10.00).
- (5) Interest at the rate of twelve percent (12%) per annum will apply to any late payments.

G. Disposition of Fees and any other type of payment to the City:

All fees and any other types of payment made to the City in regards to alcoholic beverage control, upon collection, shall be made to the City Clerk, or his designee, for deposit into the appropriate designated account.

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 Burnside Alcoholic Beverage Control Administrator.
- (b) The Mayor may appoint/assign the duties of the ABC Administrator to the Chief of Police, or other Officer of the City, pursuant to KRS 241.170.
- (c) If the Chief of Police, or other Officer of the City, is not appointed by the Mayor to assume the role of ABC Administrator, then the Mayor may request that the City Council shall add the position of City ABC Administrator, as well as any other additional personnel to assist a City ABC Administrator, to the City's Pay and Classification Plan, including the number of positions and a salary range for each position.
- (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 and as authorized under KRS Chapters 241 through 244. The City ABC Administrator, along with any designated ABC Administration investigator(s), and

also who shall be members of the Burnside Police Department, 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 Burnside Police Department for the purpose of having his or her fingerprints taken.

(h) The City ABC Administrator, before entering upon his or her duties, shall take the oath as prescribed in Section 228 of the Kentucky 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 MAINTENANCE 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 as 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 City of Burnside, 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 Burnside, including as follows:

(1) Name and address;

(2) Nature of interest;

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

(4) If an individual, the Date of birth of the applicant;

(5) Date residence was established in Kentucky, if a resident of Kentucky. If Burnside resident, indicate when residence was established;

(6) Whether or not he or she has any interest in any other license or LLC, corporation, partnership or other business organization holding a license under this Ordinance or issued by the Commonwealth of Kentucky or any other state;

(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.

(9) Plans and specification for the proposed location for the license sought including specifications as to square footage of retail space for the outlet sought to be renovated or constructed.

(10) The location and address of the proposed licensee.

(11) Anticipated employment requirements of the proposed licensee

(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 Administrator shall create a system of ranking applicants for approval utilizing in Article IV 12 (b) of this ordinance or any other relevant factors determined by the City 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.

(e) Only applications approved by the City ABC Administrator shall be eligible to apply for a state license pursuant to KRS 243.370.

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 renewal of a license until the applicant and his or her place of business shall have been approved by the City Building Inspector, and any and all other inspections required by the Kentucky Building Code, City Ordinance, 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 an applicant for license, or a licensee, shall in any manner attempt to bribe, threaten, unduly influence or intimidate the City ABC Administrator, mayor, or any member 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, mayor and other city officials 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(s);

(c) The type of license(s);

(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 within 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 an 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 Burnside 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 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 cancelled, 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 the provisions of KRS Ch. 241 through 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 in 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 received 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, shall immediately cause one of his 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 upon written permission obtained by the former licensee from the ABC Board.

(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 Clerk.

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

(a) The City ABC Administrator may refuse to issue or renew 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) In the case of any licenses subject to the State ABC Board set quota, before approving an application, the City ABC Administrator is directed to consider, in addition to the factors set out in KRS 243.450, 243.490 and 243.500, and any other factors the Administrator determines in his or her discretion to be reasonable and pertinent to the license application, the following criteria:

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

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

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

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

(5) **Revitalization of Historic Burnside.** The City of Burnside wholeheartedly supports the revitalization of historic Burnside and the revitalization and reuse of existing buildings.

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

(7) **Public support of licensed business in the area.** The City of Burnside intends that public sentiment and safety be considered in deciding upon the approval of retail liquor sales licenses in any area of the city.

(8) **Long Term Growth of the City.** The City of Burnside intends to consider the long term growth of the City and ensure that all growth is consistent with the City's overall growth strategy, the City's Comprehensive Plan, and the City's existing and future infrastructure capabilities.

(9) **Geographic distribution.** The City of Burnside intends to provide for distribution of license in such a manner as to serve the entire geographic area contained in the city limits of Burnside as of the date of the adoption of this ordinance or subsequently annexed into the City of Burnside.

(c) 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 monthly 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 monthly report. In the case of caterer filing, the monthly 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 (or its designee) 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 and agreed upon procedures. In the event the conditions of any license requirement are not met during any particular month, the City ABC Administrator shall have discretion in determining whether suspension/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. In performing this determination of compliance, and examination of *Agreed Upon Procedures*, the City may at its discretion utilize the services of a licensed accounting firm to ascertain compliance.

(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.

(2) 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, OPERATION AND DELIVERY

1. Hours for Sale/Operation/Delivery.

(a) A licensee for distilled spirits, wine and/or malt beverages *by the drink* shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 6:00 a.m. until 1:00 a.m. Monday - Saturday and premises to be closed at 1:00a.m. Said licensee shall not be permitted to sell or dispense spirits, wine, and/or malt beverages after the hours of 12:00 a.m. (midnight on Saturday) to 12:00 a.m. (midnight on Sunday) with the noted exceptions below:

1. A licensee whose premise(s) is licensed to serve alcoholic beverages as such *by the drink*, shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 11:00 a.m. on Sunday until 1:00 a.m. on Monday upon obtaining a license permitting the sale of alcoholic beverages *by the drink* on Sunday.
2. A licensee for distilled spirits, wine and/or malt beverages *by the drink*, shall be permitted to sell or dispense alcoholic beverages on New Year's Eve until 2:00a.m. on January 1, regardless of the day of the week January 1st shall fall upon, provided that the appropriate licenses and approvals have been obtained from both the City and the state ABC Board.

(b) Retail package distilled spirits, wine sales, and package malt beverage sales shall be permitted from 6:00 a.m. until 1:00 a.m. each day of the week.

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, electronic gambling devices 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/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. Retail Premises Not To Be Disorderly

No person licensed to sell alcoholic beverages at retail shall cause, suffer, or permit the licensed premises to be disorderly. Acts, which constitute disorderly premises, consist of permitting patrons to cause public inconvenience, annoyance or alarm, or wantonly creating a risk through:

- (a) Engaging in fighting or in violent, tumultuous, or threatening behavior;
- (b) Making unreasonable noise;
- (c) Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency;
- (d) Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;
- (e) Creating a public nuisance;
- (f) Engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor; or
- (g) Failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or a local government, or by state administrative regulations, for the licensed premises.
- (h) Conducting promotional efforts that are not customary or usual for a restaurant operation (e.g. wet t-shirt contest).

5. 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.

6. Retail Sales to Certain Persons Prohibited

No retail licensee shall sell, give away or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away or delivered to:

- (a) A minor, except that in any prosecution for selling alcoholic beverages to a minor (under 21 years of age);
- (b) A person actually or apparently under the influence of alcoholic beverages. 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;
- (c) A habitual drunkard or any person known to the seller or server to be a 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;
- (d) Except as provided in Section C above, anyone known to the seller to have been convicted of D.U.I. or any other misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or for a felony.
- (e) No licensee shall sell or agree to sell any alcoholic beverages or cause or permit any alcoholic beverage to be sold to any person who has been reported to the licensee by any court or by any officer acting at the direction of a court as having failed to make proper provision for his family.

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.

7. 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.

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

(a) 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 a 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.

(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. 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. This requirement applies to both city and state licenses. 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.

10. Legal Transactions for Wholesalers, Distributors and Retail.

(a) No wholesaler or distributor shall sell any alcoholic beverages to any person in the city for any consideration except under the usual 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.

(b) No licensee shall purchase or agree to purchase any alcoholic beverages from any person within or without this state, who is not licensed to sell the beverages to the particular purchaser at the time of the agreement to sell, nor give any order for any alcoholic beverages to any person who is not a holder of a special agent's or solicitor's license if such a license is required.

(c) No licensee shall sell, or agree to sell, any alcoholic beverage to any person within or without this state who is not legally authorized to buy and receive the beverages at the time of the agreement to sell, nor secure any order for the sale of any alcoholic beverages through any person who is not the holder of a special agent's or solicitor's license.

11. 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, unless the person is employed in a capacity that does not involve the sale or serving of alcoholic beverages.

(d) Within two (2) years prior to the date of his/her employment, has had any license issued under KRS 243.020 to 243.670 or under any other act or ordinance relating to the regulation of the manufacture, sale, or transportation of alcoholic beverages revoked for cause.

Violation of this section shall subject both employer and employee to penalties provided in this chapter and shall be cause for revocation of license.

12. Happy Hour Restrictions.

Licensees shall not offer reduced drink specials (e.g. two-for-one, happy hours) before 5:00p.m. Sunday through Thursday, nor after the hour of 9:00 p.m. until closing. No licensee shall sponsor, offer or permit drinking contests, all-you-can-drink specials or free drinks on any licensed premise in the city.

13. 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.

14. 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 (or without) 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. Note: *Also see the Burnside City Ordinance 220.3 "Regulation of Sexually Oriented Businesses and Employees"*

15. 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.

16. 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 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 licensees, 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 premise 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 to 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;

(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 Burnside 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 consume 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 photo 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.

Burnside 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 Burnside Police Officers, the City ABC Administrator, and the assigned Burnside Police Department 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 located on the licensed premise. 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 Pulaski 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 Clerk for deposit in the appropriate designated account. The City Clerk shall then give notice

to the City ABC Administrator of payment of said fines.

(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 Pulaski 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), or imprisoned for not more than six (6) months, or both; and for the second and each subsequent violation, he shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or imprisoned 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 Burnside, including but not limited to, the Planning and Zoning Ordinance as currently enacted, and/or as may be amended in the future. Signage which refers directly, or indirectly, to alcoholic beverages shall be limited to one (1) two (2) square foot sign, for each fifty (50) square feet of glass window, that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of display 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 price cards not larger than two and one-half (2 ½) inches in size, setting forth the price at which he offers alcoholic beverages for sale.

(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 there under.

(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) It shall be unlawful for any person, holding a license under this chapter to sell alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize, or advertise such, or for any other purpose in connection with the sale of alcoholic beverages.

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. Exceptions to this restriction may be granted for seasonal sidewalk cafes or restaurants physically located on a marina or boat dock, upon application to and authorization from the ABC City Administrator. The permission to operate a sidewalk cafe 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. At no time shall any music originating from any part of the premises create a nuisance;

(c) No licensed premise physically located on a marina or boat dock with a patio or outdoor seating area shall offer alcoholic beverages for sale in a patio or outdoor area except in a clearly defined patio or outdoor area that is enclosed by a fence or railing of a height specified by current building code, sufficient in height and structure to prevent accidental access to the body of water. Further the aforementioned fence or railing must be constructed and placement must be in a manner consistent with accepted building code. Permission to operate a patio / outdoor sales area by a licensee located at a marina or boat dock shall be governed by the provisions of this article and shall be subject to the regulation of local zoning authorities, codes enforcement, public safety officers, and the US Army Corp of Engineers as well as any applicable state/federal laws.

(d) 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.

(e) 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 cafe 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 Requirement for Outdoor Sales and Service of Alcoholic Beverages, Specifically, Permitted Sidewalk Cafes in the City's Historic Downtown Area.

(a) Licensees in the historic 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 cafe"). The aforementioned expansion must not block or prevent the intended use of the sidewalk. Licensees who do not serve food shall not be eligible to apply for a sidewalk cafe permit.

3. Conditions for Sidewalk Cafe 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 cafe 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 cafe 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 cafe 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 cafe during any period when the sidewalk cafe 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 cafe 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 cafe 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 cafe. 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 cafe;

(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 a sidewalk cafe may not be assigned or transferred.

4. Other Requirements Applicable to Sidewalk Cafes.

No sidewalk cafe 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 cafe, in an amount to be established by the City Attorney. 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.

5. Conditions for operating a patio or outdoor seating area by a licensee physically located on a boat dock or marina.

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 outdoor patio/seating area (hereafter known as patio) by a licensee physically located on a boat dock or marina 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 patio shall be permitted in any portion of the public walkway area of the dock where normal pedestrian traffic flow is obstructed. The patio shall not be permitted in any manner to obstruct the entrance/exit to the licensed premise.
- (b) 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.
- (c) 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.
- (d) At no time shall any music originating from any part of the licensed premises create a nuisance;
- (e) 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;
- (f) The permit for a patio / outdoor seating area may not be assigned or transferred.

ARTICLE XV. IMPLEMENTATION OF ORDINANCE PROVISIONS; SEVERABILITY

1. Implementation of Changes in Ordinance Provisions.

The Burnside 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.

This Ordinance shall take effect immediately after its Passage and Publication as required by law.

Mayor
City of Burnside

Attest
Clerk, City of Burnside

First Reading _____ 11/4/13 _____

Second Reading _____ 11/11/13 _____

Date of Publication _____ 11/17/13 _____

Publication _____ Commonwealth Journal _____

ORDINANCE NO. 412.0A

AN ORDINANCE OF THE CITY OF BURNSIDE, KENTUCKY
AMENDING THE CITY OF BURNSIDE ALCOHOL BEVERAGE
CONTROL ORDINANCE KNOWN AS ORDINANCE NO. 412.0

ORDINANCE NUMBER 412.0 is amended as to ARTICLE IV. Sec. 4 only to read as follows:

ARTICLE IV. APPLICATION AND MAINTENANCE OF LICENSE

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 renewal of a license until the applicant and his or her place of business shall have been approved by the City Building Inspector, and any and all other inspections required by the Kentucky Building Code, City Ordinance, 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 an applicant for license, or a licensee, shall in any manner attempt to bribe, threaten, unduly influence or intimidate the City ABC Administrator, mayor, or any member 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, mayor and other city officials 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.

(e) Each license holder shall utilize a Point of Sale customer check out system which

uses automated devise linked to a computer that automatically maintains sales data as part of a computerized system for accounting and inventory control. This Point of Sale system must show sales of beverages or inventory subject to fees under this ordinance.

Except as amended as set forth above, the remained of Ordinance No. 412.0 remains as adopted and in full force and effect.

RON JONES, MAYOR

Attest: _____
CRISSA MORRIS, CITY CLERK

First Reading and Approval: _____

Second Reading and Approval: _____

Date Published: _____

ORDINANCE NO. 412.0B

AN ORDINANCE OF THE CITY OF BURNSIDE, KENTUCKY
AMENDING THE CITY OF BURNSIDE ALCOHOL BEVERAGE
CONTROL ORDINANCE KNOWN AS ORDINANCE NO. 412.0

ORDINANCE NUMBER 412.0 is amended as to ARTICLE II. Sec. F only to read as follows:

F. Regulatory License Fee:

(1) Pursuant to KRS 243.075, there is hereby imposed a Regulatory License Fee on the gross receipts of sale of alcoholic beverages of each licensee who has a local license issued by the City ABC Administrator. The City's Regulatory License Fee shall be ~~five percent (5 %)~~ six percent (6 %) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the Regulatory License Fee shall be five percent (5 %) of gross sales. The Regulatory License Fee shall be four percent (4 %) on gross retail sales of package malt beverages.

Except as amended as set forth above, the remained of Ordinance No. 412.0 remains as adopted and in full force and effect.

RON JONES, MAYOR

Attest: _____
CRISSA MORRIS, CITY CLERK

First Reading and Approval: _____

Second Reading and Approval: _____

Date Published: _____

ORDINANCE NO. 410.0c

AN ORDINANCE OF THE CITY OF BURNSIDE, KENTUCKY AMENDING ORDINANCE NO. 410.0, SEC. 9-92, RELATING TO THE DAYS AND HOURS OF SALE OF ALCOHOLIC BEVERAGES WITHIN THE CITY OF BURNSIDE, KENTUCKY

BE IT ORDAINED BY THE CITY OF BURNSIDE THAT ORDINANCE NO. 410.00, SEC. 9-92 IS AMENDED AS FOLLOWS:

SEC. 9-92 HOURS OF SALE

(A) Retail Sale for Consumption on Licensed Premises. Premises for which there had been granted a license for the retail sales of alcohol beverages by the drink, shall be permitted to sell beverages between the hours of 6:00 a.m. and 11:30 p.m. 12:00 midnight. However, sales may not be conducted at any time when the poles are open for any election in the precinct in which the license is granted. However, if the licensee provides a separate area within his licensed premises capable of being locked and closed off within which is kept all stocks of alcoholic beverages and malt beverages and if the department is kept locked during the foregoing time he is not permitted to remain open to sell alcoholic beverages, he shall be deemed to have complied with this subsection.

~~(B) No alcohol beverages may be sold or dispensed on Sundays, unless pursuant to paragraph (C) below. The sale of alcoholic beverages by the drink shall be permitted on Sundays from 11:00 a.m. until 12:00 midnight for hotels, motels and restaurants which are licensed for the retail sale of alcoholic beverages by the drink, provided such hotel, motel and restaurant satisfy the following conditions:~~

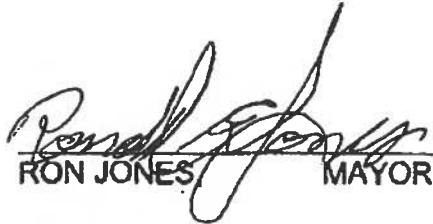
~~(a) Have dining facilities with a minimum seating capacity of one hundred (100) people at tables; and~~

~~(b) Receive no more than thirty percent (30%) of their annual food and beverage income from the dining facilities from the sale of alcohol; and~~

~~(c) The licensee shall apply for and receive a Sunday sales license and pay a Sunday sales license fee in the amount of \$150.00 annually.~~

(C) The licensee may sell and dispense alcoholic 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 Commission. If New Year's Eve falls on Sunday, alcoholic beverages may be sold and dispensed after ~~5:00~~ 1:00 p.m.; if New Year's Day falls on Sunday, the alcoholic beverages may be sold and dispensed until 2:00 a.m. on January 1, provided that in either instance, the appropriate licenses for Sunday sales and for extended sales must be obtained from both the City and the State ABC Commission. In either event, there shall be no additional city license fee imposed.

This Ordinance shall be in full force and effect upon its passage and publication.


RON JONES, MAYOR

ATTEST:

CRISSA MORRIS, CITY CLERK

Date of first reading:

11/12/12

Date of second reading:

11/16/12

Date of Publication:

ORDINANCE 410.0

RECEIVED

2005 DEC 21 A 10: 21

ALCOHOLIC
BEVERAGE CONTROL

**AN ORDINANCE REGULATING THE SALE OF
ALCOHOLIC BEVERAGES WITHIN THE CITY LIMITS OF
BURNSIDE, KENTUCKY**

Whereas, an election was held on May 18, 2004, pursuant to KRS 242.185(6) as to whether the City of Burnside would permit the limited sale of alcoholic beverages within the city limits of Burnside, and

Whereas, a majority of the citizens of the City of Burnside have voted in favor of the limited sale of alcoholic beverages, and

Whereas, the City may impose certain restrictions, regulations, and license fees upon such retail establishments that wish to sell alcoholic beverages, and

Now Therefore, Be it Hereby Ordained by the City Council of the City of Burnside, Kentucky, as follows, to wit:

Section 410.0 of the Code of Ordinances of the City of Burnside, Kentucky, shall read as follows:

ARTICLE I. ALCOHOLIC BEVERAGE CONTROL

General Provisions

Sec. 9-63	Short Title	Page <u>4</u>
Sec. 9-64	Definitions	Page <u>4</u>
Sec. 9.65	Incorporation of State Law	Page <u>4</u>
Sec. 9.66	Scope of Coverage	Page <u>4</u>

Administration and Control

Sec. 9-67	Alcoholic Beverage Control Administrator	Page <u>4</u>
Sec. 9-68	Oath and Bond of the Local Alcoholic Beverage Officer and Employees	Page <u>5</u>
Sec. 9-69	Functions, Duties And Power	Page <u>5</u>
Sec. 9-70	Police Power	Page <u>5</u>
Sec. 9-71	Right of Inspection	Page <u>5</u>
Sec. 9-72	Appeals from the Local Alcoholic Beverage Officer	Page <u>6</u>

License, Taxes and Fees

Sec. 9-73	License Required For Sale	Page <u>6</u>
Sec. 9-74	Limited Restaurant Alcoholic Beverage By The Drink License	Page <u>6</u>
Sec. 9-75	Date Licenses Expire; Prorating	Page <u>6</u>
Sec. 9-76	Persons Who May Not Be Licensed	Page <u>6</u>
Sec. 9-77	Premises That May Not Be Licensed For Sales At Retail	Page <u>6</u>
Sec. 9-78	Businesses Authorized By Retail Drink License	Page <u>7</u>
Sec. 9-79	Public Notice Of Intent To Apply For License	Page <u>7</u>
Sec. 9-80	Local Administrator To First Approve Application	Page <u>7</u>
Sec. 9-81	Applications For State License	Page <u>7</u>
Sec. 9-82	Submittal Of Application	Page <u>7</u>
Sec. 9-83	Cause For Refusal Of License, Suspension Or Revocation of License	Page <u>8</u>
Sec. 9-84	Approval Or Denial Of Application	Page <u>8</u>
Sec. 9-85	Payment Of Fees, Refund of Fees	Page <u>9</u>
Sec. 9-86	Issuance of City License	Page <u>9</u>
Sec. 9-87	Posting Of License	Page <u>9</u>
Sec. 9-88	Transfer Or Acquisition Of License	Page <u>9</u>
Sec. 9.89	Applicant To Pay For Own License	Page <u>9</u>
Sec. 9.90	Deposit Of Fees, Fines To General Fund	Page <u>10</u>

Sec. 9-91 License To Become Void If Business Dormant; License Renewal Page 10

Prohibitions, Restrictions And Regulations

Sec. 9-92 Hours of Sale Page 11
Sec. 9-93 Hours of Sale, Exceptions, Requirements Page 11
Sec. 9-94 Food Service Requirements Page 12
Sec. 9-95 Confiscation Authorized If Violations Occur Page 12
Sec. 9-96 Advertising Restrictions Page 12
Sec. 9-97 Treating Prohibited Page 13
Sec. 9-98 License To Purchase From And Sell Only To Persons
Authorized To Sell Or Purchase Page 13
Sec. 9-99 Retail Sales To Certain Persons Prohibited Page 13
Sec. 9-100 Sale To Person Not Providing For His Family Prohibited Page 14
Sec. 9-101 Licensee to Display Notice As To Sales To Minors; Warning
Of Dangers Of Drinking During Pregnancy To Be Posted Page 14
Sec. 9-102 Minors Not To Possess Or Purchase Liquor
Nor To Misrepresent Age Page 14
Sec. 9-103 Persons Whom Licensees May Not Employ Page 15
Sec. 9-104 Retail Premises Not To Be Disorderly Page 15
Sec. 9-105 Mandatory Responsible Beverage Service Training Page 16

Regulatory License Fees

Sec. 9-106 Regulatory License Fee Imposed Page 17
Sec. 9-107 Payment Page 17
Sec. 9-108 Failure to Pay Interest On Late Payments Page 17

Sec. 9-109 Penalty for Nonpayment Page 17
Sec. 9-110 Adequate Record Keeping Requirement Page 18
Sec. 9-111 Audit Requirements Page 18
Sec. 9-112 Penalties Page 18

General Provisions

Sec. 9-63 **SHORT TITLE**

This Chapter shall be known and may be cited as the Alcoholic Beverage Ordinance of the City of Burnside.

Sec. 9-64 **DEFINITIONS**

As used in this chapter, unless the context clearly indicates or requires a different meaning, the words and terms defined in Kentucky Revised Statute 241.010 shall apply.

Sec. 9-65 **INCORPORATION OF STATE LAW**

- (A) 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 as part of the alcoholic beverage control law of the City, except as otherwise lawfully provided herein.
- (B) No person shall sell, deal in, barter or exchange or possess for sale, or for the purpose of evading any law or ordinance, give away any alcoholic beverage in any quantity whatever, or cause the same to be done, without complying with all of the provisions of this chapter and all statutes and regulations of the state applicable thereto. Penalty, see Section 9-109.

Sec. 9-66 **SCOPE OF COVERAGE**

- (A) This chapter shall be construed to apply to the traffic in both malt beverages and distilled spirits and wine where the context permits such applications.
- (B) Nothing contained in this chapter shall excuse or relieve the owner, proprietor, employee or person in charge of any licensed premises in the city, where alcoholic beverages are sold, from the restrictions, requirements and penalties of any other ordinances of the city or of any other statutes of the state relating to violations pertaining to alcoholic beverages.

Administration and Control

Sec. 9-67 **ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR**

The duties of the City Alcoholic Beverage Control (ABC) Administrator shall be assigned to the office of the Mayor who shall have the power to designate additional city officials to assist in the responsibilities of

the office. The local ABC Administrator and/or his designee shall have the power and authority to promulgate such regulations as may be necessary to implement this chapter.

Sec. 9-68 OATH AND BOND OF LOCAL ABC ADMINISTRATOR AND EMPLOYEES

- (A) Each ABC Administrator before entering upon his duties as such, shall take the oath prescribed in section 228 of the Constitution, and shall execute a bond with a good corporate surety in the amount of not less than one thousand dollars (\$1,000.00).
- (B) Each ABC Administrator may require any city employee under his supervision to execute a similar bond in such amount, as he deems necessary.

Sec. 9-69 FUNCTIONS, DUTIES AND POWERS

- (A) The functions of the City ABC Administrator shall be the same with respect to the city license and regulations, as the functions of the Kentucky Alcoholic Beverage Control Board ("Board") with respect to state licenses and regulations, as provided in KRS 241.060, except that no regulation of the ABC Administrator shall be less stringent than the statutes relating to alcoholic beverage control, or the regulations of the Board. No regulation of the ABC Administrator shall become effective until approved by the Board.
- (B) The ABC Administrator shall have the same powers and duties with respect to suspension and revocation for cause of city licenses as the State Alcoholic Beverage Control Board has with respect to state licenses under KRS 241.060. The ABC Administrator, on his own initiative or on the complaint of any person, may institute proceedings to revoke or suspend any license issued under this chapter.

Sec. 9-70 POLICE POWER

The City ABC Administrator and his designee shall have the full police powers of law enforcement officers, and their jurisdiction shall be co-extensive with the boundaries of the City. They, along with any City of Burnside law enforcement officer, may inspect any premises where alcoholic or malt beverages are sold, stored or otherwise trafficked, without first obtaining a search warrant. City law enforcement officers shall have full police powers while performing any such inspections.

Sec. 9-71 RIGHT OF INSPECTION

The City ABC Administrator, his designee and City of Burnside law enforcement officers shall have available at all reasonable times for their inspection all books and records required to be maintained by licensees 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.

Sec. 9-72 APPEALS FROM CITY ABC ADMINISTRATOR

Appeals from the order of the City ABC Administrator may be taken to the state Alcoholic Beverage Control 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.

License and Taxes

Sec. 9-73 LICENSE REQUIRED FOR SALE

No person shall sell or dispense at retail, or have in his possession for sale, any alcoholic or malt beverage, nor manufacture or transport any alcoholic or malt beverages in the City unless he shall first procure and have issued to him a license under the provisions of this chapter and all statutes of Kentucky and regulations adopted pursuant to this chapter.

Sec. 9-74 LIMITED RESTAURANT ALCOHOLIC BEVERAGE BY THE DRINK LICENSE; FEES

The City shall have the power and authority to issue licenses for the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat a minimum of one hundred (100) persons inside the building per 804 KAR 9:010 and derive a minimum of seventy percent (70%) of their annual gross receipts from the sale of food. The fee for this city license will be \$800.00 per year.

Sec. 9-75 DATE LICENSES EXPIRE; PRORATION

All licenses issued by the City shall be valid for a period of no more than one year. All licenses shall expire on March 31 of each year. Applications for renewal are to be filed with the City at least fifteen (15) days prior to expiration. When any person applies for a new license he shall be charged the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (½) the fee if less than six (6) months remain before the license is due to be renewed. In the event any licensee shall cease doing business for any reason, no refund of the City license fee shall be granted.

Sec. 9-76 PERSONS WHO MAY NOT BE LICENSED

A person shall not become a licensee under this chapter for any of the reasons stated in KRS 243.100.

Sec. 9-77 PREMISES THAT MAY NOT BE LICENSED FOR SALES AT RETAIL

No license for the sale of alcoholic beverages at retail shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease or a permit for a term of not less than the license period.

Sec. 9-78 BUSINESSES AUTHORIZED BY RETAIL DRINK LICENSE

A limited restaurant alcoholic beverage by the drink license shall authorize the licensee to purchase, receive, possess, and sell distilled spirits, malt beverages, and wine at retail by the drink for consumption on the licensed premises. The licensee shall purchase distilled spirits, malt beverages and wine only from licensed wholesalers. A licensee may purchase wine in containers not smaller than one hundred (100) milliliters if the wine does not exceed fourteen percent 14% alcohol by volume. A licensee may buy mixed drinks in containers of a capacity not smaller than three hundred fifty-five (355) milliliters if the mixed drinks contain a substantial proportion of carbonated water. A retail drink license shall not authorize the licensee to sell distilled spirits or wine by the package.

Sec. 9-79 PUBLIC NOTICE OF INTENT TO APPLY FOR LICENSE

Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for a supplemental bar license shall before applying for a license advertise, by publication in *The Commonwealth Journal* his or her intention to apply for a license as stipulated in KRS 243.360.

Sec. 9-80 LOCAL ADMINISTRATOR TO FIRST APPROVE APPLICATION

An applicant for an alcoholic beverage license must have his city license approved by the City Alcoholic Beverage Control Administrator before they are eligible to apply for a state license.

Sec. 9-81 APPLICATION FOR STATE LICENSE

All applicants for alcoholic beverage licenses must submit an application to the state as stipulated in KRS 243.380.

Sec. 9-82 SUBMITTAL OF APPLICATION

An applicant for a license under this chapter shall file with the City Alcoholic Beverage Control Administrator a copy of his state license application containing the information required by KRS 243.380 and 243.390. The City application shall include the consent of the applicant permitting the City ABC Administrator to inspect and search the licensed premises at any reasonable time, to confiscate articles found on the premises in violation of any ordinance or statute, and to order an emergency temporary closure of the premises if the public health, safety, morals and welfare is threatened by one or more violations of any ordinance or statute involving disturbance of the peace or public disorder. The temporary closure shall remain in effect until review of the alleged violations by the City ABC Administrator within thirty-six (36) hours.

Sec. 9-83 CAUSES FOR REFUSAL TO ISSUE OR RENEW LICENSE; SUSPENSION OR REVOCATION OF LICENSE.

- (A) **State Law References.** 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, 243.500, as well as violation of any city ordinance regarding beverage licensing, sales, or the administration of licenses.
- (B) **Delinquent Taxes or Fees.** No license to sell alcoholic or malt beverages shall be granted or renewed to any person who is delinquent in the payment of any taxes or fees due the City at the time of issuing the license; nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any delinquent taxes or fees due the City. If a licensee becomes delinquent in the payment of any taxes or any fees due to the City at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension. The City ABC Administrator may, in his discretion, approve a license to sell after receiving from the City Clerk, a written statement to the effect that the applicant for the license has paid or has made satisfactory arrangements with the City Clerk for taking care of the indebtedness represented by the unpaid and delinquent taxes or fees. This section shall apply only to taxes and fees, which are due and payable by the licensee.
- (C) **Appeals.** Appeals may be taken from decisions of the City ABC Administrator to the State Alcoholic Beverage Control Board according to the provisions of KRS 241.200 and 243.550.
- (D) **Failure to Meet Seating Standards.** A cause for refusal to issue or renew a license and for suspension or revocation of a city license shall occur if the licensee ceases either to provide a minimum of one hundred (100) seats or derive a minimum of seventy percent (70%) of their annual gross receipts from the sale of food.

Sec. 9-84 APPROVAL OR DENIAL OF APPLICATION

- (A) If upon review of the application, the City ABC Administrator determines that the applicant has complied with all requirements of the Alcoholic Beverage Control Law, as well as all regulatory provisions of this chapter, that the location is one that can be approved, including but not limited to the requirements of KRS 243.220 and 242.185(6), that a license may be issued within the rules fixed by the State Alcoholic Beverage Control Board, and that there are no causes for denial of the license, the City ABC Administrator shall approve the application.
- (B) If the City ABC Administrator has reasonable grounds to believe that an applicant has violated any law, rule or regulation relating to alcoholic beverages, he may issue to the applicant a written order setting forth such violation and requiring the applicant to show cause

why the requested license should be issued. The City ABC Administrator shall have the right to order, and the applicant shall have the right to request, an evidentiary hearing to examine the violation set forth in the show cause order issued by the City ABC Administrator. Any decision by the City ABC Administrator on the application shall be subject to appeal as provided by law.

Sec. 9-85 PAYMENT OF FEES, REFUND OF FEE

Upon approval of the application by the City ABC Administrator, the applicant shall pay the amount of the license fee provided in this chapter in the form of a certified check, money order or cash. Payment shall be held in deposit by the City pending state license approval and issuance of the City license by the City ABC Administrator.

If the payment of a license fee was erroneously made or the licenses are not issued, the City shall authorize the payment of the refundable amount.

Sec. 9-86 ISSUANCE OF CITY LICENSES

The City licenses shall be issued and the fees collected by the City Clerk. No license shall be issued by the clerk without the approval of the City ABC Administrator. The license shall be in form of a standard City Business License and a business license category shall thereby be established as "Limited Restaurant Alcoholic Beverage by the Drink License". The fees shall be those established in Section 9-106 of this chapter and shall not replace the standard business license fees required in Ordinance 220.2.

Sec. 9-87 POSTING OF LICENSES

Each city license in the same form prescribed by KRS 243.440 for state licenses shall be posted at the licensed premises in the same manner prescribed by KRS 243.620 for state licenses. An exact duplicate or facsimile of each city license shall remain in the City Clerk's office as part of the public record.

Sec. 9-88 TRANSFER, ASSIGN, OR ACQUIRE EXISTING LICENSE

The transfer, assigning or acquisition of a city license shall be the same as provided for in state licenses in KRS 243.630, 243.650, and 243.660.

Sec. 9-89 APPLICANT TO PAY FOR OWN LICENSE

The license fee for a city license shall be payable by the person who makes application for the license and to whom it is issued, and no other person shall pay for any license issued under these sections.

Sec. 9-90 DEPOSIT OF FEES

All monies derived from license fees or from fines as prohibited in this chapter shall be paid to the treasury of the City and become a part of the general funds of the City.

Sec. 9-91 LICENSE TO BECOME VOID IF BUSINESS DORMANT; LICENSE RENEWAL

- (A) Surrender of license and exceptions. Any license under which no business is transacted during a period of ninety (90) days shall become null and void. At the expiration of the ninety (90) day period the license shall be surrendered to the City ABC Administrator, except that any licensee who is unable to continue in business at the licensed premises may apply to the Commonwealth of Kentucky Alcoholic Beverage Control Department, pursuant to 804 KAR 4:1110, as amended, from time to time to continue such license in dormancy. In the event a period of dormancy is applied for or granted by the ABC Administrator to the licensee, the licensee shall immediately notify the City ABC Administrator. Upon resumption of business or transfer or assignment of the license, the licensee shall notify the City ABC Administrator and a fee shall be due and payable to the City for the period the license was in dormancy in the same amount due had the license remained active for the same period.

- (B) Applications based on pending construction or development. Applications approved by the City ABC Administrator and based on pending construction or development on the premises shall be null and void after ninety (90) days of the commitment to issue a license if the applicant fails to proceed in an orderly fashion to initiate construction or development on the premises involved. The ABC Administrator may grant extensions, as he deems appropriate in exercise of his sound discretion based on facts and circumstances surrounding each request.

- (C) Renewals: Time for filing. All renewal of licenses and payment of license fees must be on file with the City ABC Administrator fifteen (15) days before the expiration of the license for the preceding license period or the license shall be canceled, except that the licensee may file a written, verified statement fifteen (15) days prior to the expiration date of the license, setting forth the facts justifying an extension. The ABC Administrator may then extend the time for filing of a renewal of the license for a reasonable length of time within the exercise of his sound discretion. The licensee shall pay the licensee fee from the expiration date of the former license or licenses and payment shall be refunded to the licensee in the event that the license or licenses are not renewed at, or before, the end of the extension period.

Prohibitions, Restrictions and Regulations

Sec. 9-92 HOURS OF SALE

- (A) **Retail Sale for Consumption on Licensed Premises.** Premises for which there had been granted a license for the retail sales of alcoholic beverages by the drink, shall be permitted to remain open between the hours of 6:00 a.m. and 12:00 midnight each weekday. However, sales may not be conducted at any time when the polls are open for any election in the precinct in which the license is granted. However, if the licensee provides a separate area within his licensed premises capable of being locked and closed off within which is kept all stocks of alcoholic beverages and malt beverages and if the department is kept locked during the foregoing time he is not permitted to remain open to sell alcoholic beverages, he shall be deemed to have complied with this subsection.
- (B) No alcoholic beverages may be sold or dispensed on Sundays, unless pursuant to paragraph (C) below.
- (C) The licensee may sell and dispense alcoholic 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 Commission. If New Year's Eve falls on Sunday, alcoholic beverages may be sold and dispensed after 5:00 p.m.; if New Year's Day falls on Sunday, the alcoholic beverages may be sold and dispensed until 2:00 a.m. on January 1; provided that in either instance, the appropriate licenses for Sunday sales and for extended sales must be obtained from both the City and the State ABC Commission. In either event, there shall be no additional City license fee imposed. *Week Day New Year's*
- (D) **Control of Premises During Closing Hours.** During the closing hours, the premises of any license for the sale of alcoholic beverages by the drink must be closed to and vacant of all customers and all persons except the licensee and his employees, who shall be allowed on the premises for business purposes only. Alcoholic beverages shall not be sold, given away, delivered or consumed by anyone in any room of the premises during the closing hours and no parties, private or public, shall be held on the premises. The premises shall not be loaned, rented or leased to anyone during closing hours for a party or for any other purposes.
- (E) **Wholesale Deliveries on Sundays Prohibited.** There shall be no deliveries of alcoholic or malt beverages on Sunday.

Sec. 9-93 HOURS OF SALE; EXCEPTIONS; REQUIREMENTS

The licensee shall be allowed to remain open during hours when the sale of alcoholic beverages is prohibited for the sole purpose of providing food services to the public. However, all stocks of alcoholic beverages shall be locked and closed off from the public during said time period.

Sec. 9-94 FOOD SERVICE REQUIREMENT

All license holders of a "Limited Restaurant Alcoholic Beverage By the Drink License" shall be required to maintain food service during all hours that alcohol is served.

Sec. 9-95 CONFISCATION AUTHORIZED IF VIOLATIONS OCCUR

If any alcoholic or malt beverages are found on the outside of the locked or closed-off area of any licensed premises at any hours during which the licensee is prohibited by the State Alcoholic Beverage Control Act or by this ordinance from selling alcoholic or malt beverages, a prima facie presumption shall arise that such alcoholic or malt beverages were kept outside the locked or closed-off section for the purpose of sale in violation of this chapter and the State Alcoholic Beverage Control Act and shall be grounds for revocation or suspension of the license. In addition to other penalties provided for the violation of this chapter, the City Alcoholic Beverage Control Administrator is hereby authorized to confiscate the alcoholic or malt beverages.

Sec. 9-96 ADVERTISING RESTRICTIONS

- (A) Signage which refers directly, or indirectly, to alcoholic beverages shall be limited to one (1) two (2) square foot sign, for each fifty (50) square feet of glass window, that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of display 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 price cards not larger than two and one-half (2 ½) inches in size, setting forth the price at which he offers alcoholic beverages for sale.
- (B) No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.
- (C) 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 for advertising alcoholic beverages.
- (D) It shall be unlawful for any person, holding a license under this chapter to sell 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 connection with the sale of alcoholic beverages.
- (E) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

Sec. 9-97 "TREATING" PROHIBITED

No license holder shall give away any alcoholic beverage in any quantity for less than a full monetary consideration.

Sec. 9-98 LICENSEE TO PURCHASE FROM AND SELL ONLY TO PERSONS AUTHORIZED TO SELL OR PURCHASE

- (A) No licensee shall purchase or agree to purchase any alcoholic beverages from any person within or without this state, who is not licensed to sell the beverages to the particular purchaser at the time of the agreement to sell, nor give any order for any alcoholic beverages to any person who is not a holder of a special agent's or solicitor's license if such a license is required.
- (B) No licensee shall sell, or agree to sell, any alcoholic beverage to any person within or without this state who is not legally authorized to buy and receive the beverages at the time of the agreement to sell, nor secure any order for the sale of any alcoholic beverages through any person who is not the holder of a special agent's or solicitor's license.

Sec. 9-99 RETAIL SALES TO CERTAIN PERSONS PROHIBITED

No retail licensee shall sell, give away or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away or delivered to:

- (A) A minor, except that in any prosecution for selling alcoholic beverages to a minor (under 21 years of age) it is an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that this age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he was of legal age to purchase alcoholic beverages. The evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.
- (B) A person actually or apparently under the influence of alcoholic beverages.
- (C) A habitual drunkard or any person convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period.
- (D) Except as provided in Section C above, anyone known to the seller to have been convicted of D.U.I. or any other misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or for a felony.

Sec. 9-100 SALE TO PERSON NOT PROVIDING FOR HIS FAMILY PROHIBITED

No licensee shall sell or agree to sell any alcoholic beverages or cause or permit any alcoholic beverage to be sold to any person who has been reported to the licensee by any court or by any officer acting at the direction of a court as having failed to make proper provision for his family.

Sec. 9-101 LICENSEE TO DISPLAY NOTICE AS TO SALE TO MINORS; WARNING OF DANGERS OF DRINKING DURING PREGNANCY TO BE POSTED

- (A) Every retail licensee shall display at all times in a prominent place a printed card at least eight (8) inches by eleven (11) inches in size which shall show, in thirty (30) point or larger type, substantially as follows:

Persons under the age of twenty-one (21) are subject to a fine 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 purpose of purchasing or obtaining alcoholic beverages.

- (B) All licensed retail vendors of alcoholic beverages shall post in prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the Alcoholic Beverage Control Commission, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.

Sec. 9-102 MINORS NOT TO POSSESS OR PURCHASE LIQUOR NOR TO MISREPRESENT AGE-USE OF FRAUDULENT IDENTIFICATION

- (A) As used in KRS 244.083 and this section; "Premises" has the meaning it is given in KRS 241.010 and also means the place of business of a person licensed to sell alcoholic beverages.
- (B) A person under 21 years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (C) A person under 21 years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (D) A person under 21 years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.
- (E) A person under 21 years of age shall not use, or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

Sec. 9-103 PERSONS WHOM LICENSEES MAY NOT EMPLOY

- (A) A person holding any city license shall not knowingly employ in connection with his or her business any person who:
 - (1) Has been convicted of any felony within the last two (2) years.
 - (2) Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years.
 - (3) Is under the age of twenty (20) years, unless the person is employed in a capacity that does not involve the sale or serving alcoholic beverages.
 - (4) Within two (2) years prior to the date of his employment, has had any license issued under KRS 243.020 to 243.670 or under any other act or ordinance relating to the regulation of the manufacture, sale, or transportation of alcoholic beverages revoked for cause.
- (B) The provisions of paragraph (1) and (2) of subsection (A) of this section shall not apply if the employee's duties do not involve the sale, service, delivery, or traffic in alcoholic beverages at the licensed premises.
- (C) Violation of this section shall subject both employer and employee to penalties provided in this chapter and shall be cause for revocation of license.

Sec. 9-104 RETAIL PREMISES NOT TO BE DISORDERLY

- (A) No person licensed to sell alcoholic beverages at retail shall cause, suffer, or permit the licensed premises to be disorderly.
- (B) Acts, which constitute disorderly premises, consist of permitting patrons to cause public inconvenience, annoyance or alarm, or wantonly creating a risk through:
 - (1) Engaging in fighting or in violent, tumultuous or threatening behavior, or
 - (2) Making unreasonable noise; or
 - (3) Refusing to obey any official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency; or
 - (4) Creating a hazardous or physically offensive condition by an act that serves no legitimate purpose; or

(5) Conducting promotional efforts that are not customary or usual for a restaurant operation (e.g. wet t-shirt contest).

Sec. 9-105 MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

- (A) All persons employed as managers in the selling and servicing of alcoholic beverages shall participate in and complete a City-approved responsible beverage training program. For such a program to be approved by the City, it must effectively train participants in the identification of false documents and recognition of characteristics of intoxication. The City will not require enrollment in a specific class, but only that the training be obtained from a recognized program meeting the goals presented in this ordinance.
- (B) All persons required to complete training, under paragraph (A) above, shall complete that training within sixty (60) days of the date on which the person first becomes subject to the training requirement. All persons completing the training required by this section shall be re-certified in responsible beverage service training, by a City approved program not less than once every three years thereafter.
- (C) Each restaurant licensed by this ordinance must at all times that alcoholic beverages are being served have at least one person currently certified in responsible beverage service training, as required in paragraphs (A) and (B) above, on duty.
- (D) The manager of the restaurant shall be responsible for compliance with these requirements and shall maintain for inspection by the City ABC Administrator a record on each employee that shall contain the pertinent training information.

Regulatory License Fee

Sec. 9-106 REGULATORY LICENSE FEE IMPOSED

- (A) A regulatory license fee is imposed on the gross receipts from retail sales of alcoholic beverages under each license issued for the purpose of insuring full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the City. The City Council shall adopt, at the budget adoption for the fiscal year, an annual rate for the regulatory license fee as shall be reasonably estimated to insure full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit against the fee shall be allowed in an amount equal to any licenses or fees imposed under the provisions of this chapter for the retail sale of alcohol.
- (B) The regulatory license fee shall be six percent (6%) for the fiscal year beginning July 15, 2004 and continuing thereafter until amended or repealed.

Sec. 9-107 PAYMENT

Payment of such fee shall accompany forms approved for use by the ABC Administrator and shall include a tabulation of both gross food sales and alcohol sales for the preceding month. The forms and payment shall be submitted to the City Clerk by the twentieth (20th) day of each month for the preceding month's sales. The fraction, represented by one divided by the number of months for which the City license was issued, of any fees required under the provisions of this chapter shall be deducted each month as a credit.

Sec. 9-108 FAILURE TO PAY; INTEREST ON LATE PAYMENT

Failure to pay the monthly remittance within ten (10) days after the due date shall constitute a violation of this chapter.

Interest shall be assessed upon any past due payments at the rate of twelve (12) percent per annum.

Sec. 9-109 PENALTY FOR NONPAYMENT

If the holder of any license shall fail to pay the regulatory license fee imposed by this Section within ten (10) days of the due date, an automatic penalty of Fifty and 00/100 Dollars (\$50.00) shall be assessed for the first offense. An automatic penalty of One Hundred and 00/100 Dollars (\$100.00) shall be assessed on the second offense, and an automatic penalty of Two Hundred and 00/100 Dollars (\$200.00) shall be assessed on the third offense. In addition to the monetary penalty, the City Alcoholic Beverage Control Administrator shall hold a hearing for a second and third offense requiring the licensee to show cause why the license should not be suspended or revoked with full authority to do so upon appropriate findings. The calculation of the number of offenses for the purposes of invoking the above penalties shall be done on a twelve (12) month basis, with the number of offenses being reduced to zero at the beginning of each new license period.

Sec. 9-110 ADEQUATE RECORDKEEPING

Every licensee shall keep and maintain 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 State Alcoholic Beverage Control Board, or such rules and regulations as may be from time to time promulgated by the City Alcoholic Beverage Control Administrator and approved by a majority of a quorum of the City Council. Where the sales of alcoholic beverages as they relate to other sales are determinative of the licensee's eligibility to retain a license, the licensee shall maintain adequate records to show that relationship. The books and records shall be available at all reasonable times for inspection by the City Alcoholic Beverage Control Administrator or any authorized representative.

Sec. 9-111 AUDIT REQUIREMENTS

The City Alcoholic Beverage Control Administrator may at his discretion require that a licensee make his records available to the City for the purpose of conducting an audit to verify compliance with the seventy percent (70%) food sales requirement.

Sec. 9-112 PENALTIES

- (A) Any person who violates any provision of this chapter for which no specific penalty is provided shall be guilty of a misdemeanor and shall, in addition to other penalties provided by law, be subject to the following penalties:
- (1) For the first offense a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00)
 - (2) For any subsequent offense a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00) or confinement in jail nor more than six (6) months, or both.
- (B) Any proceeding for the revocation of any license issued hereunder shall be governed in accordance with the provisions of KRS 243.480.

Dean E. Lovins, Mayor
City of Burnside

ATTEST:

Cecil Goff, Jr., CKMC,
City Clerk/Treasurer, City of Burnside

First Reading: June 7, 2004

Second Reading: July 12, 2004

Date of Publication: July 16, 2004

Publication: Commonwealth-Journal, Inc.

Prepared By: Jeffrey Scott Lawless, City Attorney

"SUMMARY FOR PUBLICATION FOLLOWS ON NEXT PAGE"

**CITY OF BURNSIDE
ORDINANCE NO. 410.0**

**AN ORDINANCE REGULATING THE SALE
OF ALCOHOLIC BEVERAGES WITHIN THE CITY
LIMITS OF BURNSIDE, KENTUCKY**

The City of Burnside, Kentucky, has adopted the above-referenced Ordinance, known as the "Alcoholic Beverage Ordinance of the City of Burnside," which: incorporates by reference the State Alcoholic Beverage Control laws, and the words and terms defined in Kentucky Revised Statute 241.010; sets forth its scope of coverage to apply to the traffic in malt beverages, distilled spirits, and wine, where the context permits such applications; creates and designates the City Alcoholic Beverage Control (ABC) Administrator, providing an oath and bond therefor, and assigning functions, duties, and powers; provides for the taking of appeals from said officer; establishes the required licenses for the sale of alcoholic beverages by the drink at restaurants and dining facilities seating a minimum of one hundred (100) persons inside the building and deriving a minimum of seventy percent (70%) of their annual gross receipts from the sale of food, and establishing the fees for said licenses; provides for the expiration of said licenses and the proration of fees therefor; sets forth the persons who may not become licensees; proscribes premises that may not be licensed; sets forth the authority of businesses so licensed; requires the giving of public notice for license applicants; requires approval of the City Alcoholic Beverage Control Administrator prior to the issuance of a license; sets forth particulars with respect to the application filed with the City Administrator; establishes the causes for refusal to issue or renew a license, and for the suspension or revocation of a license; vests the City Administrator with the authority for the approval or denial of an application; requires the payment of the license fees, and provides the refund of such fees erroneously paid; provides for the issuance of licenses by the City Clerk; requires the posting of licenses; incorporates the statutory requirements dealing with the transfer, assignment or acquisition of a city license; requires the payment of the license fee by the applicant, and requires such fees to be deposited by the City; provides for licenses to become void if the business becomes dormant; establishes the renewal process for licenses; creates prohibitions, restrictions and regulations on licensees, including hours of operation; establishes a food service requirement; authorizes the confiscation of alcoholic beverages if found outside the locked or closed-off area of any licensed premises during prohibited hours; establishes and creates restrictions relating to the advertising of

the sale of alcoholic beverages; prohibits the giving away of alcoholic beverages for less than full monetary consideration; requires the licensee to purchase from and sell only to persons authorized to sell or purchase; prohibits the sale of alcoholic beverages to persons designated therein; requires the display of notices prohibiting the sale of alcohol to minors, and the posting of warnings of dangers of drinking during pregnancy; prohibits the possession or purchase of alcohol by minors, and prohibits the misrepresentation of age and the use of fraudulent identification; prohibits the employment by licensee of persons designated therein; requires that retail premises shall not be disorderly; establishes mandatory responsible beverage service training for all persons employed as managers in the selling and servicing of alcoholic beverages; imposes a regulatory license fee of six (6%) percent on the gross receipts from retail sales of alcoholic beverages under each license, providing for the payment of same, establishing fees for late payment, and providing penalties and sanctions for the nonpayment of same; requires the keeping and maintenance of records by the licensees, and vesting the City Administrator with the authority to verify compliance by audit; and creates penalties for violations of this Ordinance.

The Ordinance was enacted on the 12th day of July, 2004, and shall be effective upon its passage and publication in full or in summary.

A complete copy of the Ordinance may be examined at Burnside City Hall.

JIM RASNICK
MAYOR, CITY OF BURNSIDE

ATTEST:

CECIL GOFF, JR.,
CITY CLERK/TREASURER