

CITY OF EARLINGTON  
ORDINANCE NO. 2014- 2

AN ORDINANCE AMENDING CHAPTER 113 OF THE  
CITY OF EARLINGTON CODE OF ORDINANCES  
RELATING TO SALE OF ALCOHOLIC BEVERAGES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EARLINGTON,  
KENTUCKY AS FOLLOWS:

Chapter 113 of the City of Earlington Code of Ordinances is hereby amended to read as follows:

**§ 113.040 NUMBER OF LICENSES.**

The number of retail package, retail drink, retail beer, wholesale beer distributors and wholesale distilled spirits distributors and ~~wholesale distilled spirits distributors~~ licenses issued in the city shall not exceed the number and type as set forth in KRS Chapter 241, 242, 243 or 244 and all administrative regulations promulgated pursuant thereto, as may be amended from time to time.

**§ 113.071 HOURS OF SALE.**

(A) Premises for which there has been granted a license for the sale at retail of distilled spirits and wine by the package shall be permitted to remain open during the hours of 6:00 a.m. to 12:00 midnight, but shall remain closed during the 24 hours of Sunday, and Christmas, ~~and at any time when the election polls are open in the precinct in which the licensee's business is located.~~

(B) Premises for which there has been granted a license for other 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, but shall be closed during the 24 hours of each Sunday except as provided in § 113.048 governing alcohol sales on Sunday, and Christmas ~~and at any time when the election polls are open in the precinct in which the licensee's business is located.~~ However, if the licensee provides a separate department within the licensed premises capable of being locked and closed off, within which is kept all stocks of alcoholic beverages, and if the department is kept locked during the aforesaid time the licensee is not permitted to remain open to sell alcoholic beverages, the licensee shall be deemed to have complied with division (A) of this section.

(C) Retail sales of malt beverages may be made between the hours of 6:00 a.m. and 12:00 midnight each day except that no such sales shall be made during the 24 hours of each Sunday excepted as provided for in § 113.048 governing alcohol sales on Sunday, and Christmas, ~~or during any time when the polls are open for an election in the precinct in which the license is granted.~~ Premises for which a malt beverage license has been issued shall be permitted to remain open during the periods such sales are prohibited if all iced or chilled malt beverages are locked up and/or unshelled malt beverages are properly placarded indicating that the sale of such goods is prohibited.

The foregoing Ordinance was read and presented to a regular meeting of the City Council of Earlington, Kentucky, for first reading on the 10<sup>th</sup> day of June, 2014, and the second reading on the 8<sup>th</sup> day of July, 2014. Motion was made by Councilmember Hunt, seconded by Councilmember


Hartline, that the Ordinance be adopted as the law of the City of  
Earlington, Kentucky.

Upon vote being taken thereon, the votes were cast as follows:


COUNCILMEMBER	YEA	NAY
Council member Hartline	✓	___
Council member Hicks	✓	___
Council member Hunt	✓	___
Council member Stafford	___	___ absent
Council member Wilson	___	___ absent
Council member Wix	✓	___

It appearing that 4 Councilmembers voted for the Motion, and 0  
Councilmembers voted against it, the Mayor announced that the Motion was  
passed and that the above Ordinance would be published as required by law.

Dated this 8<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Michael W. Seiber, Mayor  
City of Earlington, Kentucky

Attest:

  
\_\_\_\_\_  
Julia A. Sellers, City Clerk  
City of Earlington, Kentucky

CITY OF EARLINGTON, KENTUCKY  
ORDINANCE NO. 2011-1

AN ORDINANCE ADOPTING ALCOHOL BEVERAGE CONTROL  
FOR THE CITY OF EARLINGTON, KENTUCKY

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ORDINANCE SUMMARY

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WHEREAS, an election was held in the City of Earlington on March 29, 2011 in which a majority of the eligible voters elected to authorize the sale of alcoholic beverages in the City of Earlington; and

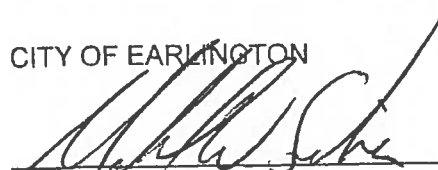
WHEREAS, the City Council of the City of Earlington has the authority to adopt an Alcoholic Beverage Control Ordinance relating to the sale of alcoholic beverages within the City of Earlington.

NOW, THEREFORE, the City Council has approved the Ordinance at first reading on April 26, 2011 and a second reading on April 28, 2011, with the Ordinance allowing and providing for provisions dealing with the sale of malt beverage, restaurant wine license, retail package license store for distilled spirits, wines and malt beverage.

NOW, THEREFORE, the Ordinance adopts provisions relating to fees, penalties, hours of operation including but not limited to the fact that there will be special Sunday sales by license authorized.

A copy of the entire Ordinance may be obtained from the Office of the City Clerk.

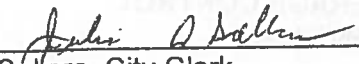
CITY OF EARLINGTON



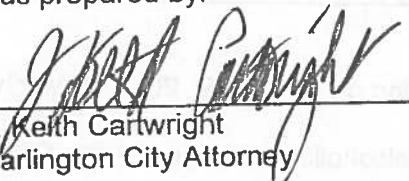
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Michael W. Seiber, Mayor

Attest:

  
\_\_\_\_\_  
Julie Sellers, City Clerk

The foregoing Ordinance Summary  
was prepared by:

  
\_\_\_\_\_  
J. Keith Cartwright  
Earlington City Attorney

JKC.alt.2011Earlington.Alcoholic Beverage Control Ordinance Summary

**CITY OF EARLINGTON, KENTUCKY  
ORDINANCE NO. 2011-\_\_\_**

**ALCOHOLIC BEVERAGE CONTROL**

WHEREAS, the City council finds it necessary to regulate the use of alcoholic beverages in order to protect the health, safety, and welfare of the citizens of the City of Earlinton;

**BE IT ORDAINED:**

Ordinance No. 2011-\_\_\_ is hereby enacted and shall read in full as follows:

**SECTION 1: GENERAL PROVISIONS**

**1.01      TITLE**

This ordinance shall be known and may be cited as the Alcoholic Beverage Control Ordinance of the City of Earlinton, Kentucky.

**1.02      DEFINITIONS**

The Definitions contained in KRS 241.010 are adopted as the meaning of such word as used in this Ordinance.

**1.03      INCORPORATION OF STATE LAW**

- (A) The provisions of Kentucky Revised Statutes (KRS) Chapters 241, 242, 243 and 244, as well as amendments and supplements thereto, are hereby adopted as part of the Alcoholic Beverage Control law of the City of Earlinton, except as otherwise lawfully provided herein. As used herein "State" means the Commonwealth of Kentucky, and "City" means the City of Earlinton, Kentucky.
- (B) Any violation of State law relating to the sale, production, storing, or otherwise trafficking in alcoholic beverages shall also constitute a violation of this Ordinance.
- (C) 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 ordinance and all State statutes and regulations applicable thereto.
- (D) All prohibitions, restrictions and regulations pertaining to alcoholic beverages contained in KRS Chapter 244 shall apply to alcoholic beverages in the City.

**1.04**      **SCOPE OF COVERAGE**

- (A) This ordinance shall be construed to apply to the traffic in malt beverages, distilled spirits, and wine where the context permits such applications. Unless the context otherwise admits or requires, the term "alcoholic beverage" or "alcoholic beverages" shall mean and shall include distilled spirits, wine, and malt beverages.
- (B) Nothing contained in this ordinance 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 ordinance or ordinances of the City or of any State statutes or regulations.

**1.05**      **DEPOSIT OF FEES, FINES TO GENERAL FUNDS**

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

**1.06**      **NOTICE TO STATE ABC BOARD OF FEES LEVIED**

This ordinance is and shall be subject to the provisions of KRS 243.610. The City Clerk shall give notice to the State Alcoholic Beverage Board of any fees or assessments levied under the provisions of this ordinance.

**SECTION 2: ADMINISTRATION****2.01**      **OFFICE OF ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR ESTABLISHED**

- (A) Pursuant to KRS 241.160, the office of Earlington Alcoholic Beverage Control Administrator (CABC) is created.
- (B) Pursuant to KRS 241.170, the City Alcoholic Beverage Control Administrator (CABC) shall be appointed by the Mayor. The City Alcoholic Beverage Control Administrator (CABC) shall serve at the pleasure of the Mayor.

**2.02**      **OATH; BOND**

Prior to entering upon the duties of the position, the CABC shall take the oath prescribed in Section 228 of the Constitution of the Commonwealth, and he/she shall execute a bond with a good corporate surety in the penal sum of not less than ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00). Any City employee under the supervision of the CABC shall execute a similar bond in such penal sum as the CABC may deem necessary.

**2.03**      **CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR  
(CABC) TO ENFORCE**

The CABC shall have the power and authority to promulgate such regulations as may be necessary to implement and/or administer this Ordinance.

**2.04**      **FUNCTIONS: DUTIES AND POWERS**

- (A) The functions of the CABC shall be the same with respect to City licenses and regulations as is the function of the Kentucky Alcoholic Beverage Control Board ("Board") with respect to State licenses and regulations, except that no regulation of the CABC shall be less stringent than the State statutes and regulations relating to alcoholic beverage control.
- (B) The CABC 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 CABC, on his or her own initiative, or on the complaint of any person, may institute proceedings to revoke or suspend any license issued under this Ordinance.

**2.05**      **ADMINISTRATOR TO HAVE POLICE POWER**

The CABC and the CABC's Investigators shall have the full police powers of peace officers, and their jurisdiction shall be coextensive with the boundaries of the City. They may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant. They may confiscate any contraband property.

**2.06**      **RIGHT OF INSPECTION**

The CABC shall have access at all reasonable times, for inspection to all books and records required to be maintained by licensees under KRS 244.150 and shall simultaneously receive copies of all reports submitted by licensees to the State Alcoholic Beverage Control Board.

**SECTION 3: LICENSING REGULATIONS**

**3.01**      **NUMBER OF LICENSES**

The number of retail package, retail drink, retail beer, wholesale beer distributors and wholesale distilled spirits distributors and wholesale distilled spirits distributors licenses issued in the City shall not exceed the number and type as set forth in KRS Chapter 241, 242, 243 or 244 and all

administrative regulations promulgated pursuant thereto, as may be amended from time to time.

### 3.02 DISTILLED SPIRITS AND WINE LICENSES; FEES

The City shall have the power and authority to issue the following kinds of distilled spirits and wine licenses upon proper application and the payment of prescribed fee. This Section shall not be construed to limit the City's authority under KRS 242.185(4) and Section 3.05 of this Ordinance, or any other provision of law, to issue licenses permitted by KRS 243.070.

	<u>License Type</u>	<u>Fee</u>
(A)	Retail Package license, per annum	\$600
(B)	Special Temporary wine license, per event	\$ 50
(C)	Motel Drink license or Restaurant Drink license, per annum	\$600

### 3.03 MALT BEVERAGE LICENSES, FEES

The City shall have the power and authority to issue the following kinds of malt beverage licenses upon proper application and the payment of prescribed fee:

	<u>License Type</u>	<u>Fee</u>
(A)	Retailer Malt Beverage license, per annum	\$200
(B)	Special Temporary Retail Malt Beverage license, per event	\$ 25

A Special Temporary Wine license shall only be issued for the purposes enumerated in KRS 243.260. A Special Temporary Retail Malt Beverage license shall only be issued for the purposes enumerated in KRS 243.290.

### 3.04 RESTAURANT WINE LICENSE; FEES

- (A) A restaurant wine license may be issued to an applicant who is an owner or lessee of a restaurant which receives fifty percent (50%) or more of its gross annual income from the sale of food and has a minimum seating capacity of fifty (50) persons at tables.
- (B) The issuance of a restaurant wine license shall be subject to the limitations of KRS 241.060(2) and 241.065.
- (C) A restaurant wine license shall authorize a licensee to purchase, receive and sell wine at retail for consumption on the licensed premises. Such licensee shall purchase wine only from licensed wholesalers.
- (D) The fee for a restaurant wine license shall be six hundred dollars (\$600.00) per annum for a new applicant and four hundred dollars (\$400.00) per annum for a renewal license.



## 3.05

**CONSUMPTION OF DRINK ON PREMISES; LICENSE REQUIRED; FEE**

- (A) The City Council of the City, pursuant to KRS 242.185, has determined that an economic hardship exists within the City, as is evidenced by Hopkins County's high rate of unemployment of more than 10%, slow rate of growth and a decline in population in the City of Earlington which has been caused by economic opportunities. The City Council has further determined that the licensing authorization contained in subsections "B" and "C" of this Section could aid economic growth. Further, the City Council adopts this Ordinance, i.e. the "Alcoholic Beverage Control Ordinance of the City of Earlington", as a comprehensive, regulatory ordinance covering, *inter alia*, the licensing and operation of hotels, motels, inns, and restaurants for the sale of alcoholic beverages by the drink for consumption on the premises.
- (B) The City shall have the power and authority to issue licenses authorizing hotels, motels, inns or restaurants to sell alcoholic beverages by the drink for consumption on the premises. The licenses shall only be issued to hotels, motels or inns containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons, or bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons. The term "bona fide restaurants" as used in this section shall mean, in addition to having the minimum seating requirements set forth above, restaurants which derive at least fifty percent (50%) of their gross revenue from the sale of food for consumption on the premises; this requirement is and shall be in accord with KRS 242.1295. The fee for such a license shall be six hundred dollars (\$600.00) per annum.
- (C) In accordance with KRS 242.185(4), the CABC is authorized to issue any license permitted by KRS 243.070, and the activity thereby licensed is permitted in accordance with State law and City law.
- (D) Unless a different license fee is provided for in this Ordinance, the City of Earlington license fee for any license authorized by KRS 243.070 shall be the maximum license fee allowed to the City by KRS 243.070, as it may be amended from time to time.
- (E) All regulations which may be issued to administer KRS 242.185, this section of this Ordinance, and any other provision of this Ordinance or State law, shall conform to the requirements of KRS 241.190.

## 3.06

**SPECIAL PRIVATE CLUB LICENSE; FEES**

The City shall have the power and authority to issue a private club license to any nonprofit social, fraternal, military or political organization or club, which for more than one year prior to the date of application has maintained and operated a club room or rooms from which the general

public is excluded. The license shall authorize the licensee to exercise the privilege of a malt beverage or a distilled spirits and wine retail drink licensee, or both, at the designated premises if the general public is excluded. All restrictions and prohibitions applying to a distilled spirits and wine retail drink license shall apply to a special private club licensee. (KRS 243.270)

(A) The fee for this category of license shall be:

<u>License Type</u>	<u>Fee</u>
Special Private Club License, per annum	\$300

### 3.07

#### LIMITED GOLF COURSE LICENSE; FEES

(A) The City shall have the power and authority to issue limited golf course licenses as authorized by KRS 243.070. The licenses shall include distilled spirits, wine, and malt beverages.

(B) The fee for this category of license shall be:

<u>License Type</u>	<u>Fee</u>
Limited Golf Course License, per annum	\$800

### 3.08

#### MALT BEVERAGE CONSUMPTION ON PREMISES

The City Council of the City has determined that it is desirable and appropriate to regulate conduct on premises licensed to sell malt beverages at retail. State law makes no distinction between package sales of malt beverages and sale of malt beverages for consumption on the premises. The City finds that while a number of licensed premises may be suitable for the sale of malt beverages to be removed for consumption elsewhere, there are also a number of premises which are not suitable or appropriate for consumption of malt beverages on the premises. Examples include, but are not limited to, package distilled spirits and wine stores, grocery stores, convenience stores, and premises which do not have adequate facilities for the congregation of customers who are consuming on premises, such as availability of food, adequate restrooms, and at least a minimum of seating for customers.

- (A) Except for special temporary retail malt beverage licenses issued for consumption of malt beverages on the premises, no malt beverage licensee shall allow consumption of any malt beverage on the licensed premises unless the licensee also holds, for the same premises a:
- (1) restaurant wine license, or
  - (2) motel drink license, or
  - (3) restaurant drink license, or
  - (4) special private club license.

- (B) If no license set out in subsection (A) of this section is held by the malt beverage licensee, malt beverage consumption on the premises may nevertheless be allowed by the licensee on a restaurant premises having seating at table for no less than 50 persons, and which receives no less than fifty percent (50%) of its total food sales and alcoholic beverage sales from the sale of food.
- (C) The intent of this section is to regulate and establish standards of conduct on premises selling malt beverages under license. This section shall not be construed as imposing any limitation upon the number of malt beverages licenses issued pursuant to this Ordinance. Nothing contained in this section shall be construed as prohibiting a licensee from selling malt beverages upon the licensed premises. The sole prohibition contained in this section is allowing consumption of malt beverages on the licensed premises if the nature of the premises does not conform with one of the situations described in (A)(1), (2), (3) or (4); or subsection (B) of this section.

### **3.09 SPECIAL SUNDAY SALE LICENSES**

Any person or entity possessing a valid retail drink license, restaurant wine license, or a special private club license may apply for a special limited Sunday sale retail drink license to sell distilled spirits, wine or malt beverages by the drink on Sunday between 1:00 p.m. and 10:00 p.m. No sale of alcoholic beverages may be sold on Sunday until the applicant has applied for and obtained a limited Sunday liquor by the drink license from the Kentucky Department of Alcoholic Beverage Control and has paid all application license fees and costs associated therewith.

### **3.10 LICENSE TERM: RENEWAL**

Applications for renewal of licenses required by this Ordinance shall be made for each license year, which, in order to coincide with the State license year, shall begin the first day of May and extend through the last day of April of the succeeding year. Applications for renewal are to be filed with the CABC no less than fifteen (15) nor more than forty-five (45) days prior to expiration.

### **3.11 PRO-RATION: REFUNDS PROHIBITED**

Pro-ration of fees shall be as provided for State licenses in KRS 243.090. In the event any licensee shall cease doing business for any reasons, no refund of the City license shall be granted to such licensee.

**3.12**      **ASSIGNMENT, TRANSFER, CONTINUANCE, LICENSE REPLACEMENT**

- (A)      The assignment, transfer, continuance, pledge or hypothecation of City licenses shall be governed by the provisions of KRS 243.630, 243.640, 243.650 and 243.660. An approval by the State, under those statutes, shall be deemed an approval by the City. Non-approval by the State shall be deemed non-approval by the City. No City license may be sold or otherwise transferred (including transfer to any premises) unless the proposed transfer shall have first received the approval of the State Board, and thereafter the acknowledgement of the CABC is given. A transfer fee of \$25.00 shall be paid to the City.
- (B)      When a license has been lost or destroyed, the CABC may issue a duplicate or replacement license upon payment of a fee of \$25.00.

**3.13**      **LOCATION OF BUSINESS RESTRICTED**

Licenses under this Ordinance shall not authorize the conduct of business in any place other than that specifically described in the original State application and license. Any additional buildings or rooms attached to licensed premises and requiring separate service bars shall require a City supplemental bar license.

**3.14**      **APPLICATION: CONTENTS: EMERGENCY ACTION**

An applicant for a license under this ordinance shall file with the CABC a copy of such applicant's 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 CABC to inspect and search the licensed premises at any reasonable time, to confiscate articles found on the premises in violation of any ordinance, statute, or regulation, 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 CABC, which review shall occur within thirty-six (36) hours of the imposition of the temporary closure.

**3.15**      **APPROVAL OR DENIAL OF APPLICATION**

- (A)      Upon review of the application, the CABC may approve the application if the CABC determines that:
- (1) The applicant has complied with all requirements of the State Alcoholic Beverage Control Law, as well as all regulatory provisions of this Ordinance.

- (2) The location is one that can be approved, including but not limited to the requirements of KRS 243.220;
  - (3) A license may be issued within the quota limits fixed by the State Alcoholic Beverage Control Board, and
  - (4) There are no other causes for denial of the license.
- (B) If the CABC has reasonable grounds to believe that an applicant has violated any law, rule or regulation relating to alcoholic beverages, the CABC 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 CABC 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 CBAC. Any decision by the CABC on the application shall be subject to appeal as provided by law.
- (C) As prescribed by KRS 243.550, hearings upon appeals from orders of the CABC or upon proceedings for revocation or suspension shall be held by the board. The board may, at its discretion, hold the hearing in Frankfort, or in the county where the licensed premises, or the premises to be licensed, are located. Decisions shall be made and final orders entered only upon the vote of a majority of the board. The hearings shall be conducted in accordance with the provisions of KRS Chapter 13B.
- (D) Pursuant to KRS 243.560, any final order of the board refusing, revoking or suspending a license may be appealed from by the applicant or licensee, and any final order of the board granting or refusing to revoke or suspend a license may be appealed from by any citizen feeling himself aggrieved.

### 3.16

#### PAYMENT OF FEES

Upon approval of the application by the CABC, the applicant shall pay to the City Clerk the amount of the license fee provided in this ordinance in the form of a certified check, money order or cash. Payment shall be held on deposit by the City pending State license approval and issuance of the City license by the CABC.

### 3.17

#### POSTING OF LICENSES: PUBLIC RECORD

Each City license shall be in substantially the same form prescribed by KRS 243.440 for State licenses, and 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 CABC's office as part of the public record.

## 3.18

**LICENSE TO BECOME VOID IF BUSINESS DORMANT:  
LICENSE RENEWAL**

- (A) Under the provisions of the Kentucky Revised Statutes, all administrative regulations promulgated pursuant to the provisions of the Kentucky Revised Statutes, and this ordinance, as they may be amended from time to time, a quota system may exist for the number of licenses to sell alcoholic beverages in the City. Therefore, it is necessary that a licensee actually conduct the business, may suffer an interruption of business by situations not under the licensee's control and various exceptions to this dormancy rule are included in subsection (B).
- (B) 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 CABC, except that any licensee who is unable to continue in business at the licensed premises may apply to the State Alcoholic Beverage Control Department, pursuant to 804 KAR 4:110, 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 State, to the licensee, the licensee shall immediately notify the CABC. Upon resumption of business or transfer or assignment of the license, the licensee shall notify the CABC and a fee shall be due and payable to the CABC for the period the licensee was in dormancy in the same amount due had the license remained active for the same period.
- (C) Applications approved by the CABC 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. Extensions may be granted by the CABC as he or she deems appropriate in exercise of sound discretion based on facts and circumstances surrounding each request.
- (D) Applications for renewal of licenses and payment of the license fee must be on file with the CABC at least fifteen (15) days, but not more than forty-five (45) days, before the expiration of the licenses for the preceding license period, or the license shall be cancelled. However, the licensee may file a written, verified statement at least fifteen (15) days prior to the expiration date of the license, setting forth facts justifying an extension. The CABC may then extend the time for filing an application for renewal of the license for a reasonable length of time within the exercise of his or her sound discretion. The licensee shall pay the license 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.

3.19

**CAUSES FOR REFUSAL TO ISSUE OR RENEW LICENSE:  
SUSPENSION OR REVOCATION OF LICENSE**

- (A) Causes for refusal to issue or renew a City license and for suspension or revocation of a City license shall be the same as provided for State licenses according to KRS 243.450, 243.500, as well as violation of any City ordinance regarding alcoholic beverage licensing, sales, the administration of licenses, or a licensee allowing conduct on the licensed premises which is prohibited by this Ordinance.
- (B) No license to sell alcoholic beverages shall be granted or renewed to any person or other entity 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 the City at any time during the license period, the license to sell alcoholic beverages shall be subject to revocation or suspension. The CABC may, in his or her 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 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) No retail package liquor license shall be issued for any premises unless the applicant certifies under oath that ninety (90%) percent of the total projected gross receipts from sale made at the licensed premises during the twelve (12) month period following the issuance of the license shall consist of the projected gross receipts from sales of alcoholic beverages. No retail package liquor shall be renewed for any premises unless ninety (90%) percent of its gross receipts from sales for the immediate past month and the immediate past twelve (12) months have been derived from the sale of alcoholic beverages.
- (D) Appeals may be taken from decisions of the CABC to the State Alcoholic Beverage Control Board according to the provisions of KRS 241.200 and 243.550.

**SECTION 4: SALE OF ALCOHOLIC BEVERAGES**

4.01

**LICENSE REQUIRED FOR SALE**

No person shall sell or dispense at retail, or have in his possession for sale, any alcoholic beverages, nor manufacture or transport any alcoholic beverages in the City unless first procuring a license under the provisions of this Ordinance, all State statutes, and all regulations adopted pursuant thereto. The revocation, suspension, non-renewal, or other action which obviates the State license shall also operate to invalidate the corresponding City license.

## 4.02

HOURS OF SALE

- (A) Premises for which there has been granted a license for the sale at retail of distilled spirits and wine by the package shall be permitted to remain open during the hours of 6:00 a.m. to 12:00 midnight, but shall remain closed during the twenty-four (24) hours of Sunday, Christmas, and at any time when the election polls are open in the precinct in which the licensee's business is located.
- (B) Premises for which there has been granted a license for other 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, but shall be closed during the twenty-four (24) hours of each Sunday except as provided for in Section 3.09 governing alcohol sales on Sunday, Christmas and at any time when the election polls are open in the precinct in which the licensee's business is located. However, if the licensee provides a separate department within the licensed premises capable of being locked and closed off, within which is kept all stocks of alcoholic beverages, and if the department is kept locked during the aforesaid time the licensee is not permitted to remain open to sell alcoholic beverages, the licensee shall be deemed to have complied with subsection(A).
- (C) Retail sales of malt beverages may be made between the hours of 6:00 a.m. and 12:00 midnight each day except that no such sales shall be made during the twenty-four (24) hours of each Sunday except as provided for in Section 3.09 governing alcohol sales on Sunday, Christmas, or during any time when the polls are open for an election in the precinct in which the license is granted. Premises for which a malt beverage license has been issued shall be permitted to remain open during the periods such sales are prohibited if all iced or chilled malt beverages are locked up and/or unshelled malt beverages are properly placarded indicating that the sale of such goods is prohibited.
- (D) Any licensee for sales of alcoholic beverages by the drink or package who violates the preceding section shall be deemed guilty of a misdemeanor, shall be punished in accordance with the provisions of this ordinance, and the license shall be subject to revocation or suspension within the discretion of the CABC.
- (E) During the time a licensee's business is actually closed, the premises of any licensee for the sale of alcoholic beverages by the drink or package must be closed to and vacant of all customers and all persons except the licensee and 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.
- (F) Wholesalers shall not deliver alcoholic beverages on Sunday.



4.03

**EXCEPTIONS TO MANDATORY CLOSING TIMES:  
REQUIREMENTS**

A licensee of a premises holding a Motel Drink license; or a licensee of a premises holding a restaurant drink license; or a licensee of a premises holding a restaurant wine license 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.

4.04

**CONFISCATION AUTHORIZED IF VIOLATION OCCURS**

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

4.05

**ADVERTISING RESTRICTIONS**

- (A) No sign, banner, poster 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 window 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, oscillating, rotating, shimmering, or other lights demonstrating movement, or the illusion of movement, shall be used to illuminate, or be visible from, the exterior of any premises licensed under this Ordinance.
- (C) It shall be unlawful for any person holding any license under this Ordinance 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.
- (D) Any advertising by any licensee under this Ordinance shall be in compliance with this Ordinance, KRS 244.130, and any regulation promulgated pursuant to KRS 244.130.

## 4.06

**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 it shall be 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 his or her age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he or she was of legal age to purchase alcoholic beverages. This 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) Anyone known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period.
- (D) Anyone known to the seller or server to have been convicted of any misdemeanor attributable directly or indirectly to the use of alcoholic beverages or anyone known to the seller or server to have been convicted of a felony.

## 4.07

**MINORS NEITHER TO POSSESS OR PURCHASE ALCOHOLIC BEVERAGES NOR TO MISREPRESENT AGE: USE OF FRAUDULENT IDENTIFICATION**

- (A) As used in KRS 244.083 and this section "*premises*" means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- (B) With regard to persons under 21 years of age:
  - (1) Except as herein provided, no person under 21 years of age shall enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
  - (2) No person holding any license for on-premises consumption of distilled spirits and wine or a license for retail malt beverage sales, or any clerk, servant, agent or employee thereof shall permit any person under the age of twenty-one (21) years on the licensed premises unless such premises is a restaurant, grocery store, hotel, private club, or upon the premises for a temporary licensed event, including plays or bona fide concerts. In such exempted premises, persons under twenty-one (21) years of age shall not enter the barroom area.

(3) Minors not accompanied by a parent or legal guardian shall not remain on a licensed premises classified herein as a restaurant after the hour of 10:00 p.m. unless the minor remains only in the designated restaurant area which is clearly separated from both the barroom area and any area provided for dancing.

(4) The prohibitions set forth in subsections (1), (2) and (3) shall not apply to persons under the age of twenty-one (21) who are working on the premises, either as an employee or an independent contractor, which persons may enter and remain on said premises while they are working, and at no other time.

- (C) A licensee or any of his or her clerks, servants, agents or employees is guilty of permitting the unlawful possession or consumption of alcoholic beverages on licensed premises when he or she:
- (1) Owns, occupies, maintains, controls, leases, or exercises control or ownership of real estate, including but not limited to the buildings and other structures located thereon, and permits any person under the age of twenty-one (21) to possess or consume any alcoholic beverage on the premises; or
  - (2) Owns, occupies, maintains, controls, leases, or exercises control or ownership of real estate, including but not limited to the buildings and other structures located thereon, and allows or permits any person under the age of twenty-one (21) years to remain on the premises while that person possesses or consumes any alcoholic beverage.
- (D) In the event a violation occurs under the provisions of this section, the CABC shall forthwith determine whether the licensee, at whose business establishment the prohibited activity occurred, may have such license suspended or revoked. In the event three or more violations under the provisions of this section occur at a business establishment within a twelve (12) month period, the CABC shall suspend or revoke said license.
- (E) No person under twenty-one (21) years of age shall 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 twenty-one (21) years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (F) No person under twenty-one (21) years of age shall misrepresent his or her age for the purpose of inducing any licensee, or other employee of any licensee, to sell or serve any alcoholic beverages to such person.
- (G) No person under twenty-one (21) years of age shall use, or attempt to use, any false, fraudulent, or altered identification card or paper, or any other document, to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

## 4.08

**LICENSEE TO DISPLAY NOTICE REGARDING SALE TO MINORS**

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 the purpose of purchasing or obtaining alcoholic beverages.

## 4.09

**MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING**

- (A) "Server" for purposes of this section shall mean any person employed or working in any capacity, whether as an employee, volunteer help or as a working proprietor, in any premise licensed for the sale of alcoholic beverages where alcoholic beverages are sold or dispensed by the drink or where malt beverages are sold for consumption on the premises and whose job duties include the sale, dispensing or service of alcoholic beverages or the management of the licensed premises.
- (B) All persons employed in the selling and serving of alcoholic beverages shall participate in and complete a City-approved responsible beverage service training program. For a responsible beverage service training program to be approved by the City, it must effectively train its participants in the identification of false age documents and recognition of characteristics of intoxication. The City will not require enrollment in particular classes, but only that the training be obtained from a recognized program meeting the goals expressed in this Ordinance.
- (C) 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 from a program approved by the City not less than once every three years thereafter.
- (D) The manager of the restaurant shall be responsible for compliance with the training requirements and shall maintain for inspection by the CABC a record or file on each employee that shall contain the pertinent training information.

- (E) Any person working at a special event for which a temporary alcoholic beverage license has been approved shall not be required to comply with this section.

### **SECTION 5: REGULATORY LICENSE FEE**

#### **5.01 REGULATORY LICENSE FEE IMPOSED**

- (A) A regulatory license fee is imposed upon the gross receipts of each establishment licensed to sell alcoholic beverages. The regulatory license fee is for the purpose of insuring full reimbursement to the City for the costs 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 the licenses or fees imposed under the provisions of this Ordinance.
- (B) The regulatory license fee shall be six percent (6%) for the licensing year beginning May 1, 2010, and continuing thereafter until amended or repealed.

#### **5.02 PAYMENT**

Payment of the regulatory license fee shall accompany tax returns approved for use by the CABC and the City Clerk. The return shall be submitted to the CABC by the fifteenth (15th) day of each month for the preceding month's sales. The fraction of the fee required under the provisions of this Ordinance, represented by one divided by the number of months for which the City license was issued, shall be deducted each month as a credit.

#### **5.03 FAILURE TO PAY**

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

#### **5.04 INTEREST ON LATE PAYMENTS**

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

**5.05**      **ADEQUATE RECORD KEEPING REQUIRED**

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 CABC. 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 CABC, the City Auditor, or any authorized representatives.

**SECTION 6: PENALTIES**

**6.01**      **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 dollars (\$50.00) shall be assessed for the first offense. An automatic penalty of one hundred dollars (\$100.00) shall be assessed on the second offense, and an automatic penalty of two hundred dollars (\$200.00) shall be assessed on the third offense. In addition to the monetary penalty, the CABC may 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 purpose 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.

**6.02**      **INFRACTION CONSTITUTES A MISDEMEANOR**

- (A) Any person who violates any provision of this Ordinance for which no specific penalty is otherwise 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 dollars (\$500.00);
  - (2) For any subsequent offense a fine not to exceed five hundred dollars (\$500.00) or confinement in jail not more than six (6) months, or both.
- (B) In addition to any other penalty provided for herein, any licensee violating any provision of this Ordinance shall be subject to suspension or revocation of such licensee's license, subsequent to a hearing before the CABC.

**SECTION 7: EFFECTIVE DATE; SEVERABILITY**

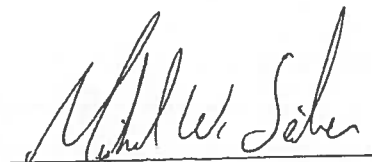
**7.01 SEVERABILITY AND INTERPRETATION**

The provisions of this Ordinance are severable, and the declaration by a Court of competent jurisdiction of the invalidity of any provision hereof shall not affect the validity of any other provision. The headings and captions contained in this Ordinance are solely of ease of use and reference, do not constitute a part of substance of this Ordinance, and shall not be used in the interpretation of any provision of this Ordinance.

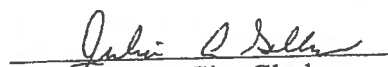
**7.02 EFFECTIVE DATE; PUBLICATION AND READING BY SUMMARY**

- (A) This Ordinance shall become effective upon its passage, approval, and publication as required by law.
- (B) In accordance with KRS 83A.060, the reading and/or publication of this Ordinance may be made by an Ordinance Summary prepared by the City Attorney.

Dated this the 28<sup>th</sup> day of April, 2011.

  
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Michael W. Seiber, Mayor  
City of Earlington, Kentucky

ATTEST:

  
\_\_\_\_\_  
Julie Sellers, City Clerk  
City of Earlington, Kentucky

