

**COMMONWEALTH OF KENTUCKY
CITY OF FLEMINGSBURG
ORDINANCE NO. 7-17-01**

**AN ORDINANCE ADOPTING REGULATIONS FOR THE CONTROL, LICENSING,
OPERATION, ADMINISTRATION, AND ENFORCEMENT OF THE SALE OF
ALCOHOLIC BEVERAGES BY THE DRINK IN QUALIFYING RESTAURANTS**

WHEREAS, the City of Flemingsburg has heretofore been classified as “dry” for the purposes of alcoholic beverage sales; and

WHEREAS the City of Flemingsburg held an election on May 16, 2017 on the question of allowing the sale of alcoholic beverages in restaurants seating a minimum of fifty (50) persons and which derive at least seventy percent (70%) of their gross receipts from the sale of food if the alcohol is purchased in conjunction with a meal; and

WHEREAS the results of the election were in favor of allowing alcohol sales making the City of Flemingsburg a “moist” territory; and

WHEREAS the City Council has determined that the following ordinance is necessary and proper for regulating the sale of alcoholic beverages in the City of Flemingsburg;

NOW, THEREFORE, BE IT ORDAINED as follows:

SECTION 1. PURPOSE

The purpose of this chapter is to establish uniform regulations and requirements of the licensing and regulation of alcoholic beverage sales pursuant to KRS 241-244.

SECTION 2. DEFINITIONS

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

SECTION 3. INCORPORATION OF STATE LAW

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

SECTION 4. SCOPE

This Chapter shall be construed to apply to the sale of alcoholic beverage by the drink in conjunction with a meal at restaurants and dining facilities within the City of Flemingsburg which seat a minimum of fifty (50) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food, as provided in KRS 242.1244.

SECTION 5. LICENSES, FEES, AND APPLICATIONS

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

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

(1) Such restaurants and dining facilities shall seat a minimum of 50 persons.

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

(C) Before an application shall be considered, the applicant must publish a notice of his or her intent to apply for an alcohol beverage license in a newspaper meeting the requirements of KRS Chapter 424. This notice of intent only needs to be published once.

(1) The advertisement shall state the name and addresses of the individual applicant or members of a partnership or limited liability company if the applicant is either as well as the name of the business and its address or if the applicant is a corporation, the names and addresses of the principal office and directors of the corporation, as well as the name and addresses of the corporation itself, the location of the premises for which the license is sought, and the type of license for which application is made. The notice must also contain the date the application will be filed.

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

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

(E) Applicants for a license under this Chapter shall pay an annual license fee of \$1200.00, of which \$50.00 shall be considered a fee for processing the application and is not refundable in the event the application is denied. The durations period for all licenses approved by the City ABC Administrator and issued by the City shall begin on May 1st and shall expire at midnight on the following April 30th. Any licenses issued after December 31st shall be assessed a fee that is based on the prorated portion of the remainder of the license period. However, no license shall be issued for less than one-half (1/2) of the annual fee.

(F) 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 or his or her agents.

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

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

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

- (I) The City licenses shall be issued and the fees collected by the City Clerk, who shall report to the City at the end of each month or quarter, all fees that have been collected. Each application shall be accompanied by a certified or cashier's check or postal or express money order for all fees.
- (J) In the event a violation of this Chapter occurs that requires the revocation of the license, the City shall not be required to refund any portion of the license fee.

SECTION 6. ABC ADMINISTRATOR

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

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

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

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

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

(F) The City ABC Administrator shall have the same powers and duties with respect to suspension and revocation for cause of City licenses as the State Alcoholic Beverage Control Board has with respect to state license under KRS 241.060. The City 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 ordinance.

(G) No person shall be a City ABC Administrator or an agent serving under the supervision of the City ABC Administrator who would be disqualified to be a member of the ABC Board under KRS 241.100.

(H) The City ABC Administrator, before enter upon his or her duties as such, shall take the oath of office as prescribed in Section 228 of the Constitution of Kentucky.

SECTION 8. OPERATIONAL REGULATIONS AND DEFINITIONS

(A) Hours of operation. No licensee operating pursuant to this ordinance shall be open for business earlier than 6:00 a.m., or later than 12:00 midnight, Monday through Saturday; nor shall any licensee for limited restaurant sales serve any alcoholic beverages on Sunday before 1:00 p.m.

(B) No licensee for limited restaurant sales may have an "open bar." Any area for serving alcohol must be operated in connection with a restaurant and by the same owner or management. All areas for serving alcohol must be directly connected with a dining room and must be only a service area for patrons of the restaurant. The sale of alcoholic beverages is prohibited except during the time the restaurant is actually engaged in and open to the public for the serving of meals.

(C) Definitions. For purposes of limited restaurant sales, the following definitions shall apply:

"MEAL." The portion of food taken at one time to satisfy appetite. ["Webster's New Collegiate Dictionary," page 712 (1976). *Department of Revenue v. To Your Door Pizza, Inc.*, 670 S.W.2d 482, 484 (Ky. App. 1983)]

"OPEN BAR." A bar with unlimited alcohol sales; for example, a facility that sells alcohol without food; or not purchased in conjunction with a meal. Any area on a premises licensed for limited restaurant sales shall only serve alcohol in conjunction with a meal.

SECTION 9. MANDATORY RESPONSIBLE BEVERAGE SERVER TRAINING

(A) All restaurants licensed by the city for the sale of alcoholic beverages shall require all their employees who are engaged in the selling or serving of alcoholic beverages or the managing of premises on which such sales are offered are to complete the Kentucky Department of Alcoholic Beverage Server Program (S. T. A. R.) or responsible beverage service training from a program approved by the Kentucky Department of Alcoholic Beverage Control.

(B) All persons employed in the selling and serving of alcoholic beverages by the drink shall participate in and complete the Kentucky Department of Alcoholic Beverage Server Program

(S. T. A. R.) or responsible beverage service training from a program approved by the Kentucky Department of Alcoholic Beverage Control.

(C) All persons required to complete training shall complete that training within sixty (60) days of the first date of employment. All persons completing the training required by this section shall receive a server certification from the server-training program and shall be recertified in responsible beverage service training from a program approved by the Kentucky Department of Alcoholic Beverage Control, not less than once every three years thereafter.

(D) All persons required to complete training who fail to complete the mandatory responsible beverage service training within the prescribed time shall not sell or serve alcoholic beverages on the licensed premises until they have successfully completed the required training.

(E) The manager of the restaurant shall be responsible for compliance with the training requirements and shall maintain for inspection by the City ABC Administrator a record on file on each employee that shall contain the pertinent training information. The file shall contain the name, job description, date of employment and proof of certification of each server regulated by this section. This information shall be available during hours of operation to any alcoholic beverage control officer or any police officer. Training records shall be retained by the licensee for a minimum of three (3) years.

SECTION 10. REGULATORY LICENSE FEE

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

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

(C) Payment of the Regulatory License Fee shall accompany the quarterly reports approved for use by the City ABC Administrator, submitted to the City Clerk by the 20th day following each quarter. The City Clerk shall apply a credit toward the regulatory license fee equal to the amount of the annual license fee imposed by Section 5 (E).

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

SECTION 11. ADULT ENTERTAINMENT ACTIVITIES PROHIBITED

No licensee shall offer or permit nudity or adult entertainment activities including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premise. No licensee shall permit explicit sexual activity,

whether actual or simulated, upon any licensed premises. No licensee shall sponsor or permit wet t-shirt or wet clothing contests, lingerie fashion shows, mud wrestling, jello wrestling or similar activities, nor shall a licensee allow dancing with touching for compensation (including but not limited to wages, tips or gratuities), or any other service, on any licensed premises. No licensee shall sponsor, offer or permit drinking contests, all-you-can-drink specials or free drinks on any licensed premise in the city.

SECTION 12. CAUSE FOR REFUSAL TO ISSUE OR RENEW LICENSE AND FOR SUSPENSION AND REVOCATION OF LICENSE

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

(A) The failure to obtain or retain a state license;

(B) The failure to comply with the provisions of this Chapter regarding gross receipts from the sale of food or the provisions of this Chapter regarding periodic certification from a certified public accountant;

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

(D) The failure to pay any fine for which provision is made herein;

(E) Failure to pay taxes (See KRS 243.490 (2)).

SECTION 13. REVOCATION OR SUSPENSION OF THE LICENSE

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

(1) Reasonable notice of charge;

(2) Representation;

(3) Presentation of such evidence and witnesses as in its discretion are appropriate to issues; and

(4) A finding reasonably supported by the evidence.

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

SECTION 14. APPEALS

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

SECTION 15. PENALTY

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

SECTION 16. DELINQUENT TAXES OR FEES

- (A) No license to sell alcoholic 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 the issuing of 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.
- (B) Further, 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.

SECTION 17. APPROVAL OF PREMISES

The City ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until said applicant and his or her place of business shall pass any and all other inspections required by the Kentucky Building Code.

SECTION 18. BOOKS, RECORDS, AND REPORTS

- (A) Every licensee under this chapter 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.
- (B) The original records of the ABC Administrator shall be kept in the office of the City Clerk. The ABC Administrator shall maintain a copy of those in his or her office.

(C) For the purpose of assisting the City ABC Administrator in enforcement of this Chapter, every licensee required to report to the Department of ABC 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 Department of ABC required by statute shall be furnished to the City ABC Administrator.

SECTION 19. SEVERABILITY

If any section, sentence, clause or portion of this Chapter is for any reason declared illegal, unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions thereof.

SECTION 20. EFFECTIVE DATE

This Ordinance is effective upon final reading and publication.

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened meeting of the Flemingsburg City Council on this 12th day of June, 2017.

INTRODUCED, SECONDED AND GIVEN SECOND READING at a duly convened meeting of the Flemingsburg City Council on this 10th day of July, 2017.

APPROVED:

ATTESTED:

Martin L. Voiers, Mayor

Joetta Marshall, City Clerk

Fleming County, Kentucky

Executive Order 17-1235 Setting Election Date

WHEREAS, a petition has been filed with the Fleming County Clerk pursuant to KRS 242.1244 to allow the sale of alcoholic beverages by the drink in the City of Flemingsburg, Kentucky at restaurants and dining facilities with a seating capacity of at least fifty (50) persons and which derive at least 70% of their gross receipts from the sale of food if the alcoholic beverage is purchased in conjunction with a meal. Only those voters who are residents of the City of Flemingsburg and who are registered voters in Precincts A103 Fleming County Water, C102 Woodman of the World, D102 PVA, and D103 Mayor's Office will be permitted to vote.

WHEREAS, the Fleming County Clerk did certify on March 14, 2017 that the aforementioned petition had the required number of signatures of qualified voters; and

WHEREAS, the provisions of KRS Chapter 242 and Chapter 243 having been complied with; and


IT IS HEREBY ORDERED that the Fleming County Clerk is to hold an election on Tuesday, May 16, 2017 from 6:00 AM until 6:00 PM Eastern Time at the Fleming County Extension Office, 1384 Elizaville Road, Flemingsburg, Kentucky in accordance with the elections laws of the Commonwealth of Kentucky.

The election shall be held ONLY in City of Flemingsburg Precincts A103 Fleming County Water, C102 Woodman of the World, D102 PVA, D103 Mayor's Office and ONLY open to city residents.

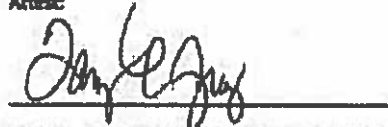
The ballot shall state pursuant to KRS 242.1244:

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

Let this order be entered this the 17th day of March, 2017 at Fleming County, Kentucky.


Larry H. Foxworthy, Fleming County Judge/Executive

Attest:



Tammy L. Gray, Fleming County Fiscal Court Clerk