

Alcohol Beverage Ordinance

City of Harlan, KY



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A NEW ORDINANCE RELATED TO THE LICENSING OF RESTAURANTS AND DINING FACILITIES FOR THE SALE OF ALCOHOLIC BEVERAGES BY THE DRINK WHEN SUCH FACILITIES SEAT A MINIMUM OF ONE HUNDRED (100) PERSONS AND DERIVE A MINIMUM OF SEVENTY PERCENT (70%) OF GROSS RECEIPTS FROM THE SALE OF FOOD.

WHEREAS, KRS 242.185(6) authorizes, by petition in accordance with KRS 242.020, a city in which prohibition is in effect, to hold a local option election on the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat a minimum of one hundred (100) person and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food; and

WHEREAS, KRS 242.185(6) further authorizes the local government of jurisdiction in which such alcoholic beverage sales are authorized to adopt regulations licensing such sales along with any other reasonable administrative regulations as may be necessary for the enforcement or administration of that statute; and regulations adopted pursuant to that authority shall conform to the requirements of KRS 241.190; and

WHEREAS, the local option election was conducted pursuant to KRS 252.185(6) and approved; and it is now the responsibility of the City to adopt regulations reasonable calculated to assure the sale of alcoholic beverages consistent with the legislative intent; and

WHEREAS, the following table of contents is contained herein solely for the purpose of convenience as a guide to this ordinance, and not to be considered a part of the substantive content of the ordinance;

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NOW, THEREFORE, BE IT ORDAINED by the Harlan City Council of the City of Harlan, Kentucky, as follows:

SECTION ONE: A new ordinance is hereby created to read as follows:

ARTICLE I – IN GENERAL

(A) Purpose:

The purpose of this Ordinance is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage sales pursuant to KRS 242.185(6), and other applicable law, for any restaurant or dining facility which seats a minimum of 100 persons and which derives a minimum of seventy percent (70%) of its gross receipts from the sale of food. To realize this intent, the City shall implement this Ordinance in such a manner to assure that:

(1) Restaurants and dining facilities licensed under this Ordinance shall seat a minimum of one hundred (100) persons. Only permanent seating, excluding bar-type stools, patio seating or temporary chairs available as needed, satisfies this seating threshold. Said seating must comply with all fire and safety capacity ratings and regulations.

(2) Restaurants and dining facilities licensed under this Ordinance shall derive a minimum of seventy percent (70%) of their gross receipts from the sale of food as certified by periodic documentation.

(B) Definitions:

The definitions of the words used throughout this ordinance, unless the context requires otherwise, shall have the same meaning as those set out in the Kentucky Alcoholic Beverage Control law (KRS Chapters 241, 242, 243, and 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.

(C) Scope:

This Ordinance shall only apply to the sale of malt, wine and distilled spirits on the premises of the licensee. Nothing in this Ordinance shall excuse or relieve the licensee, or the agent or any employee of any license thereof from the restrictions, requirements and penalties of any other Ordinance(s) of the City or statutes of the Commonwealth of Kentucky relating to violations pertaining to alcoholic beverages.

The provisions of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky (KRS Chapters 241, 242, 243, and 244) and all amendments and supplements thereto, are adopted so far as applicable to this Ordinance except as otherwise lawfully provided herein.

ARTICLE II – LICENSES

(A) Scope:

Under this Ordinance a license shall only be extended to the owners and/or operators of those establishments which qualify under KRS 242.185(6).

ARTICLE III -THE OFFICE OF THE CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

(A) DUTIES:

(1) The Mayor shall serve as the City Alcoholic Beverage Control Administrator (hereinafter referred to as the City ABC Administrator), unless the Mayor shall appoint someone else to fill the position pursuant to KRS 241.170.

(2) The city ABC Administrator may from time to time appoint such additional personnel as is necessary to assist him in the administration of this ordinance.

(3) The salary for the office of City ABC Administrator, if any, together with the salaries of any other personnel assisting the City ABC Administrator shall be fixed from time to time by the Mayor and City Council.

(4) The functions of the ABC Administrator shall be the same with the respect to the city licenses and regulations as the functions of the Alcohol Beverage Control Board of the state (hereinafter referred to as the ABC Board) with the respect to the state licenses and regulations, except that no amendment to these regulations proposed by the City ABC Administrator may be less stringent than the statutes relating to ABC Board. No regulation of the City ABC Administrator shall become effective until the City Council has first appropriately approved it.

(5) 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 KRS 241.100.

(6) The City ABC Administrator shall have all authority as authorized under Chapters 241 through 244 of the Kentucky Revised Statutes.

(7) Should the City ABC Administrator at any time have reasonable grounds to believe that any applicant, licensee, or any stockholder, agent or employee of a licensed corporation, has a criminal record, he shall have the authority to require such a person to appear in person at the Harlan Police Department for the purpose of having his or her fingerprints taken.

(8) The City ABC Administrator before entering upon his or her duties as such shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00).

(9) 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.

ARTICLE IV – APPLICATION/LICENSE

(A) APPLICATION:

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

(1) The advertisement shall state the name and addresses of the members of the partnership if the applicant is a partnership, 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.

(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.

(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 ABC Board and the city, as amended and supplemented from time to time.

(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 ABC Board and the City of Harlan including as follows:

1. Name and address;
2. Nature of interest;
3. Whether or not a United States Citizen;
4. Date of Birth;
5. Date residence was established in the state, if a resident of the state. If city resident, indicate when residence was established;

6. Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this chapter;

7. Extent of stock ownership:

8. Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

(c) Each application shall be accompanied by a certified check, cash or a postal or express money order for the license fee.

(d) 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

(e) All city licenses shall be in such form as may be prescribed by the City Council and shall contain:

1. The name and address of licensee;
2. The number of the license;
3. The type of license;
4. A description by street and number, or otherwise, of the licensed premises;
5. The name and address of the owner of the building in which the licensed premises are located;
6. The expiration date of the license;
7. 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.

(f) All licenses approved by the City ABC Administrator and issued by the city shall begin on June 1 of any year and shall expire on May 31 of the following year.

(g) 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.

(h) Any licenses issued after December 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 that for a period of six months.

(i) 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.

(B) Fees Pursuant to KRS 243.070:

(1) The annual City License fee for the sale of wine, distilled spirits, and/or malt beverages shall be \$800.00. This fee may be amended from time to time if not inconsistent with the applicable state statutes.

(2) The annual City License fee for the sale of alcoholic beverages during extended hours shall be \$2,000.00. The annual city license fee for a Special Sunday Retail Liquor Drink License shall be \$300.00. Otherwise, the annual license fee for any supplemental city license, as set out in Article II shall be the maximum amount provided in KRS 243.070 for that particular license. These

fees may be amended from time to time in not inconsistent with the applicable state statutes.

(3) The City ABC Administrator shall transmit fees upon collection to the City Treasurer to be deposited into the appropriate designated account. The ABC Administrator upon receipt of notice shall issue City licenses from the ABC Board Administrator of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 243.360, and the fact the ABC Board Administrator has approved the applicant's state application.

(C) Refund of License Fees:

Should any licensee under this chapter be prohibited from conducting said business for the full period covered by the license because of any changes that may hereafter be made in the laws of the state with reference to alcoholic beverages or other cause outside license fee for the period during which it is prevented from carrying on said business if the licensee provides sufficient proof to the City ABC Administrator that such period of inactivity was not the fault of the licensee or the result of a revocation, suspension or other wrongdoing by licensee or agent or employee of the licensee.

(D) Lost or Destroyed License:

When a license shall be lost or destroyed without fault on the part of the licensee or his agent or employee, a duplicate in lieu of the original license shall be issued by the City ABC Administrator after he shall be satisfied as to the facts; provided, however, that the person applying for said duplicate license shall pay a fee of \$25.00 for issuing said duplicate.

(E) Revocation or Suspension:

(1) Any license may be revoked or suspended by the City ABC Administrator if the licensee shall have violated any of provisions of KRS Chapters 241, 243, or 244, or any rule or regulation of the ABC Board or of the Department of Revenue relating to the regulation of the manufacture, sale, and transportation or taxation of alcoholic beverages or is 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 chapter now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors of any rules or regulations of the city heretofore in existence or authorized by the terms of KRS Chapters 241, 243, and 244 to be created, referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any such license may be revoked or suspended for any cause which the City ABC Administrator in the exercise of his sound discretion deems sufficient.

(2) 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.

(3) Any license may also be revoked or suspended for the following:

(a) Convictions of the licensee or his agent or employee for selling any illegal beverages on the premises licensed.

(b) Making any false, material statements in an application for a license.

(c) If within a period of two (2) consecutive years, any licensee or any of his clerks, servants, agents or employee of the licensee shall have been convicted of two (2) violations of the terms and provisions of KRS Chapter 241, 243, or 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 of the clerks, servants, agents or employees 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 chapter or acts of congress relative to taxation, or for a violation of any rules regulations of the 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 any bets; 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.

(F) Notice to licensee; surrender of license; hearing

(1) Within three (3) days after any order of revocation of a license becomes final, notice of revocation shall be given to the licensee and to the owner

of the licensed premises. A notice shall be mailed to the licensee and to the owner of the licensed premises at the address shown in the 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 license to the City ABC Administrator. If the licensee does not forthwith surrender the revoked license, the Chief of Police at the request of the City ABC Administrator shall immediately cause one of his officers to physical possession of the license and return it to the City ABC Administrator.

(2) When a license has been revoked, the former licensee may, with prior approval of the City ABC Administrator, dispose of and transfer his stock of alcoholic beverages to an appropriate entity.

(3) Appeal from the decision of the City ABC Administrator shall be to the ABC Board.

(4) If a license is revoked or suspended by an order of the City ABC Administrator, the licensee shall at once suspend all operations authorized under his license.

(G) Transfer of Assignment:

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

(H) Refusal of License:

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

(a) 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;

(b) If the applicant has done any act for which a revocation of license would be authorized;

(c) If the applicant has made any false material statement in his application.

(I) Review of License:

Applicants to whom a license is issued authorizing the sale of alcoholic beverages by the drink pursuant to this chapter shall provide periodic information demonstrating compliance with the continuing requirement that seventy percent (70%) of the applicants business income is earned from the sale of food.

This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly regulatory fee filings. The City of Harlan shall provide the form schedule to the licensee. The licensee's acceptance of a license to serve or traffic in alcoholic beverages shall constitute consent to the filing of the quarterly report. In the case of caterer filings, the quarterly report shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales

during the reporting period. This requirement for filing of reports notwithstanding, the City may at any time come upon the premises of any licensee and examine the books and records to determine whether the licensee is in compliance with all parts of this ordinance, including but not limited to the ratio of alcohol to food served for the reporting period. In the event the seventy (70%) percent food requirement is not met during any particular quarter, the City ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed reasonable period of time to reach compliance. If the licensee demonstrates a good faith effort, the City ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the seventy (70%) percent minimum food requirement has been met.

(J) Regulatory License Fee:

(1) Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee is imposed on the gross receipts of sale of alcoholic beverages of each license issued by the City ABC Administrator, whether under KRS 242.185(6) or under KRS 242.185(4) and Article II of this chapter. The regulatory license fee shall be five percent (5%) of gross sales of alcoholic beverages as of the time of adoption of this ordinance. Thereafter, the City Council shall adopt, at the budget adoption 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 expenses related to the sale of alcoholic beverages in the City. Should the City fail to address the

regulatory license fee in any budget, the regulatory license fee shall remain at the level at which it was last fixed until such time as the City Council shall adjust the fee.

(2) Payment of such regulatory fees shall be remitted to the City ABC Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the city for the estimated costs 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, except that a credit against a regulatory license fee in the city shall be allowed in an amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the tax returns approved for such use by the City Council. These returns and payments are due no later than by the 20th of the month.

(3) Failure to pay such quarterly remittance within ten (10) days of the due date constitutes a violation and subjects license to suspension or revocation.

(4) Penalty for failure to file a return and pay quarterly remittance by the due date is five percent (5%) of the tax for each ninety (90) days or fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than twenty-five dollars (\$25.00).

(5) Interest at the rate of eight percent (8%) per annum will apply to any late payments.

(K) Change of Information:

(1) Since a number of licenses issued by the city are in the name of corporation, it is necessary that stock ownership changes in such corporation be reported to the City ABC Administrator. The City ABC Administrator can therefore, investigate the person to whom the stock is transferred in order to ascertain whether that person is precluded by statute from holding interest in an alcoholic beverage license.

(2) As used herein, the word "change" is construed to include any change in directors or officers of the corporation, or change in ownership of stock whereby any person secures ten percent (10%) of the outstanding stock. Transfer of more than ten percent (10%) of the total stock shall require a new license.

(3) The following information will be required concerning any new director, officer, or person securing any interest in alcoholic beverage license:

- (a) Name and address;
- (b) Nature or interest;
- (c) Whether or not a United States citizen;
- (d) Date of birth;
- (e) Date residence was established in the state, if a resident of the state. If a city resident, indicate when residence was established;
- (f) Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this act;
- (g) Extent of stock ownership;
- (h) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

This information shall be filed with the City ABC Administrator as an amendment of the application pursuant to which the license was granted.

(L) Dormancy:

(1) 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 businesses, may have his business interrupted by situations not under his control, various exceptions the dormancy rule have been included in this section.

(2) 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.

(3) Except that the provisions of division 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, acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. 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 prior to the expiration of the ninety (90) days of inactivity, for any of the 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 sound discretion.

(4) All renewal licenses must be on file with the City ABC Administrator with thirty (30) days prior to the expiration of the licenses 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 prior due to construction, and act of God, casualty, death, the acquisition of these premises by any federal, state, city or other governmental agency or private corporation, possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; 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 licensee. Said license fee shall not be payable until application is made for the transfer of said license to a new location.

(M) Approval of Premise:

The City ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until said applicant and his place of

business shall have been approved by the City Building Inspector, and any and all other inspections required by the Kentucky Building Code.

(N) 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 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 at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension.

(O) Books, records and reports:

(1) 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 such city employees who may assist the City ABC Administrator in his review.

(2) For the purpose of assisting the City ABC Administrator in enforcement of the chapter, 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.

ARTICLE V – HOURS FOR SALE AND DELIVERY

(A) The licensee shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages by the drink between the hours of 6:00 a.m. and midnight each day of the week.

(B) Sunday sales permitted only during the hours of 1:00 p.m. to 12:00 a.m. if the proper license has been obtained.

(C) All deliveries must be made during normal business hours Monday through Saturday.

(D) The licensee may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m. on January 1, regardless of day of week it falls on, provided that the appropriate licenses have been obtained from both the City and State ABC Board.

ARTICLE VI – CONDITIONS, PROHIBITIONS AND RESTRICTIONS

(A) No gambling or game of chance unless otherwise authorized by the state shall be permitted in any form on such licensed premises. Dice, slot machines, or any device of chance is prohibited and shall not be kept on such premises.

(B) It shall be unlawful for any licensee licensed under this chapter to have or maintain any radio receiving apparatus on such premises that is intentionally adjusted so as to receive police messages broadcast from any law enforcement agency in Harlan County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or the ABC Administrator, or his designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

(C) The licensee shall be responsible for maintaining security on his 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.

(D) It shall be unlawful for the licensee under this chapter 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 sale of alcoholic beverages nor shall any licensee give away any alcoholic beverages in any quantity for less than a full monetary consideration.

(E) 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 permit any drunk or intoxicated person to remain on the licensed premises.

(F) The licensee shall not sell or dispense alcoholic beverages to any person who is under twenty-one (21) years of age.

(G) The licensee shall display at all times in a prominent place a sign at least 8 inches x 11 inches in 30 point or larger type which states as follows:

Persons under the age of twenty-one (21) are subject to a fine of up to one hundred dollars (\$100.00) if they:

- 1. Enter licensed premises to buy, or have served to them, alcoholic beverages.*
- 2. Possess, purchase or attempt, to purchase, or get another to purchase alcoholic beverages.*
- 3. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.*

(H) 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 principle

room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

(I) (1) The licensee shall post in a prominent place easily seen by patrons a printed sign at least 11 inches x 14 inches, 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.

(2) A person who violates this division shall be subject to a fine of not less than ten dollars (\$10.00 nor more than fifty dollars (\$50.00). (KRS 243.895.)

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

(K) No wholesaler or distributor shall sell any alcoholic beverages 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.

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

- (1) Has been convicted of any felony with the last two (2) years;
- (2) Has been twice convicted of any misdemeanor or offence directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;
- (3) 3. Is under the age of twenty (20) years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined un state statute;
- (4) Within the two (2) years prior to the date of his employment, has had any city license under this chapter revoked for cause.

(M) Licensees shall not offer reduced drink specials (e.g. two-for-one, happy hours) after the hour of 7:00 p.m. until closing.

(N) Service bars shall be located in the main dining room or kitchen of the premises. A separate, secluded room for patrons to consume alcoholic beverages is prohibited.

(O) Forms of entertainment deemed inappropriate by the City Council, ABC Administrator, or anyone assisting the ABC Administrator are prohibited. This may include but not limited to dance floors, karaoke, wet t-shirts or similar contest, mud or similar contest and so on. Contest of these types will be immediately shut down and licensee is subject to having license revoked or suspended.

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

ARTICLE VII – ENFORCEMENT

(A) AUTHORIZATION AND INVESTIGATION:

Harlan Police Department officers and the City ABC Administrator are authorized to enforce this chapter for alleged violations.

The City ABC Administrator and any investigator acting under the authority of the City ABC Administrator shall have the full police powers of peace officers with the boundaries of the city. They, along with any authorized law enforcement officer, may inspect any premises where alcoholic or malt beverages are manufactured, sold, stored, or otherwise trafficked, without first obtaining a search warrant.

(B) PENALTIES:

The following penalties shall be in addition to any criminal prosecution instituted in Harlan District Court against alleged violator and fines hereunder shall be payable to the City ABC Administrator.

(1) The City ABC Administrator may assess a fine of not more than five hundred dollars (\$500.00) per violation. This payment of said fine shall be transmitted to the City Treasurer to be deposited in the appropriate designated account.

(2) Any person, firm or corporation who violates any of the provisions of this chapter, for which no other penalty is hereby provided, shall for the first offense, be fined not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or imprisoned in the county jail for not more than six (6) months, or both, and for the subsequent violation, he shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for not more than six months, or both. The penalties provided for in this section shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, Joint Stock

Company, association or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

ARTICLE VIII – MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

(A) All persons employed in the selling and serving of alcoholic beverages shall participate in and complete a city approved responsible beverage service training program. The program must include effective training on recognizing false age identification documents and recognizing the effects of alcoholic intoxication. The city requires the program recommended by the State ABC Board.

(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) 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 or file on each employee that shall contain the pertinent training information. Each premises 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.

ARTICLE IX – SIGNS AND ADVERTISING

(A) All shall be in compliance with and all other existing regulations of the City of Harlan and Harlan County.

(B) Signage which refers directly or indirectly to alcoholic beverages will be limited to one (1) sign not over two (2) square feet that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters, or other type of displaying advertising which refers either directly or indirectly to alcoholic beverages shall be displayed on, nor shall it be visible from the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business cards not larger than 2 and ½ inches in size, setting forth the price at which he offers alcoholic beverages for sale.

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

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

(E) 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.

(F) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

ARTICLE X – IMPLEMENTATION OF ORDINANCE PROVISIONS

From time to time, the Harlan City Council by resolution or order promulgates such rules and regulations and may publish and utilize such forms and other documents as in its discretion may be necessary for the proper implementation of this chapter.

SECTION 2: SEVERABILITY

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

SECTION 3: EFFECTIVE DATE

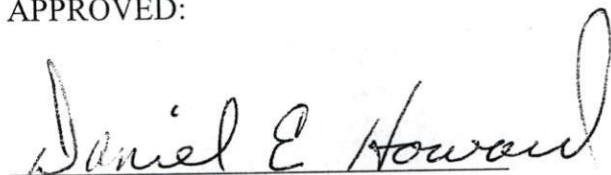
Prohibition is lifted for the limited purpose hereinabove effective_____.

GIVEN FIRST READING AND PASSED 1-13-11

GIVEN SECOND READING AND PASSED 1-17-11

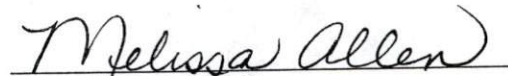
PUBLISHED BY *HARLAN DAILY ENTERPRISE* 1-21-11

APPROVED:



DANIEL E. HOWARD
MAYOR, CITY OF HARLAN

ATTEST:



MELISSA ALLEN
CLERK, CITY OF HARLAN



P. O. BOX 956
HARLAN, KENTUCKY 40831

JOSEPH A. GRIESHOP
HARLAN COUNTY JUDGE EXECUTIVE

10 AUG 26 PM 4:37

PHONE: (606) 573-2600
FAX: (606) 573-3522
TDD: 1-800-247-2510
(FOR HEARING IMPAIRED)

EXECUTIVE ORDER

BY

HARLAN COUNTY JUDGE EXECUTIVE

JOSEPH A. GRIESHOP

DATE OF EXECUTIVE ORDER: August 26, 2010

This Executive Order does certify that an Election will be held on Tuesday, November 2, 2010 for a special Local Option Election at the following precincts: Harlan, A101A; portion of Elcomb, D101A; portion of Sunshine, D103A; and portion of Grays Knob, D104A. The Election will include only the above specified precincts within the city limits of Harlan. This is done according to the statutory law.

Qualified voters in the City of Harlan, Kentucky have petitioned for the sale of alcoholic beverages by the drink at restaurants and dining facilities with a seating capacity of at least one hundred (100) persons, and which derive at least (70%) of their gross receipts from the sale of food.

Joseph A. Grieshop
Joseph A. Grieshop
Harlan County Judge Executive

8/26/10
Date

ATTEST:

Wanda S. Clem
Wanda S. Clem
Harlan County Court Clerk

