

MAGOFFIN COUNTY, KENTUCKY
ORDINANCE NO. _____

**AN ORDINANCE RELATING TO THE IMPOSITION OF A REGULATORY
LICENSE FEE UPON THE SALE OF ALCHOLIC BEVERAGES IN MAGOFFIN
COUNTY, KENTUCKY**

WHEREAS, the County of Magoffin, acting by and through its Fiscal Court, is authorized, pursuant to KRS 243.060, to impose certain license fees "for privilege of trafficking in alcoholic beverages" in Magoffin County, Kentucky; and

WHEREAS, the 2000 Kentucky General Assembly amended the language of KRS 243.075, thereby authorizing the governing body of a county containing a third class city or a fourth class city to impose a regulatory license fee upon the gross receipts of each establishment therein licensed to sell alcoholic beverages, as defined in KRS Chapter 243, for the purpose of reimbursing the county for the estimated costs of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the city and county; and

WHEREAS, Magoffin County, Kentucky contains one (1) fourth class city, namely, Salyersville, Kentucky, as classified and set forth in KRS 81.010(4); and

WHEREAS, in order to defray the costs of transporting and housing Magoffin County prisoners in the local detention center, and the costs of operating the Magoffin County Sheriff's Office, and other associated costs and expenses of the Magoffin County Fiscal Court that are directly related to the sale of alcoholic beverages in Magoffin County, it is now necessary to impose a regulatory license fee upon the gross receipts of each establishment therein licensed to sell alcoholic beverages in Magoffin County, Kentucky, as listed in KRS Chapter 243

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MAGOFFIN COUNTY
FISCAL COURT

and this Ordinance, for the purpose of reimbursing Magoffin County, Kentucky for the existing and estimated costs of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in this County.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF MAGOFFIN, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

IMPOSITION OF REGULATORY LICENSE FEE

1. In addition to those license fees authorized in KRS 243.060 which are currently imposed for the privilege of trafficking in alcoholic beverages in Magoffin County, Kentucky, a regulatory license fee upon the sale of alcoholic beverages in Magoffin County, Kentucky is hereby levied and imposed upon each licensee in Magoffin County, Kentucky that is currently the holder of or shall, following the passage of this ordinance, become the holder of a retail package license, retail drink license, motel drink license, restaurant drink license, supplemental drink license, special temporary license, restaurant wine license, special private club license, special Sunday retail license, retail malt beverage license and/or special temporary malt beverage license, and/or any other license authorized and set forth in KRS 243.060, currently and as from time to time amended.

PERIOD & RATE

2. The regulatory license fee upon the sale of alcoholic beverages established by this Ordinance is hereby levied and shall be effective for the remainder of the 2003 Fiscal Year commencing August 15, 2003. Thereafter,

said regulatory license fee upon the sale of alcoholic beverages shall be effective on July 1, 2004 and for each Fiscal Year thereafter, and shall be calculated at the rate of six percent (6%) of the gross receipts from the sale of alcoholic beverages by each license holder described in paragraph 1 of this Ordinance.

CREDIT

3. A credit against the regulatory license fee established by this Ordinance shall be allowed in an amount equal to such other license fees imposed pursuant to KRS 243.060 for each license holder described in Paragraph 1 of this Ordinance. In the case of licensees that have been, or shall, following the passage of this ordinance, be issued a license on a "per annum" basis by the Magoffin County Alcoholic Beverage Control Administrator, the credit shall be calculated at a rate one-twelfth (1/12) of the license fee required for the particular license in question and deducted from payments of the regulatory license fee upon the sale of alcoholic beverages established by this Ordinance. In the case of license holders that are issued on a "per event" basis by the Magoffin County Alcoholic Beverage Control Administrator, the credit shall be calculated at the rate of the license fee required for the particular license in question and deducted from the payment of the regulatory license fee upon the sale of alcoholic beverage established by this Ordinance.

PAYMENTS

4. Payments of the regulatory license fee established by this ordinance shall be made directly to the Magoffin County Alcoholic Beverage Control

Administrator for collection and forwarding to the Magoffin County Treasurer. Payments of the regulatory license fee established by this Ordinance shall be submitted by the fifteenth (15th) day of each month for the preceding month's sales and shall be accompanied by a form which shall set forth the license holder's gross receipts from the preceding month's sales of alcoholic beverages, the license holder's calculation of the regulatory license fee of six (6%) of those gross receipts, the deduction of any credits from the regulatory license fee shall be signed by the license holder or an authorized representative of the license holder. The necessary forms shall be available at the Office of the Magoffin County Alcoholic Beverage Control Administrator.

PENALTIES

5. If a license holder described in Paragraph 1 of this Ordinance fails to make those payments of the regulatory license fee herein imposed within ten (10) days of the due date set forth in Paragraph 4 of this Ordinance, or fails to file the form listed in Paragraph 4 of this Ordinance with a payment, or if it is discovered that the license holder has provided false information on the form listed in Paragraph 4 of this Ordinance, **such actions shall constitute violations of this Ordinance by the license holder which shall subject all licenses held by the license holder for trafficking in alcoholic beverages in Magoffin County to suspension and revocation at the sole discretion of the Magoffin County Alcoholic Beverage Control Administrator.** In instances where the Magoffin County Alcoholic Beverage Control Administrator

) chooses not to suspend or revoke licenses for a license holder's failure to pay the regulatory license fee within ten (10) days of the due date or a license holder's failure to file the form listed in Paragraph 4 of this Ordinance with a payment, a late filing penalty of twenty percent (20%) of the payment owed shall be added to the particular payment in question. The Magoffin County Alcoholic Beverage Control Administrator shall be given any and all statutory and regulatory authority necessary to enforce any and all penalties and provisions of this Ordinance. The Magoffin County Sheriff shall assist the Magoffin County Alcoholic Beverage Control Administrator in enforcing the terms of this Ordinance if requested by said Administrator.

JURISDICTION

) 6. In instances in which a city located in Magoffin County, Kentucky and described in KRS 243.075 has levied the regulatory license fee authorized by KRS 243.075, the regulatory license fee established by this Ordinance shall only be applicable outside the jurisdictional boundaries of the city that has levied such regulatory license fee. In all other incorporated or unincorporated areas in Magoffin County, Kentucky, the Magoffin County Fiscal Court shall have jurisdiction to collect the regulatory license fee established by this Ordinance.

STATUTORY AUTHORITY & PURPOSE

) 7. The statutory authority for the imposition and levy of this regulatory license fee by the Magoffin County Fiscal Court upon the sale of alcoholic beverages in Magoffin County, Kentucky is set forth in those powers granted by

KRS 243.075, KRS 67.080 and KRS 67.083. The imposition and levy of this regulatory license fee by the Magoffin County Fiscal Court upon the sale of alcoholic beverages in Magoffin County, Kentucky shall be for the purpose of fully reimbursing the Magoffin County Fiscal Court for the estimated costs of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in Magoffin County, Kentucky.

EFFECTIVE DATE

8. This Magoffin County Ordinance shall become effective upon its Second Reading, adoption and passage, as required by law.

Motion To Adopt by: _____

Motion Seconded by: _____

INTRODUCED, SECONDED, AND GIVEN FIRST READING AND
APPROVAL at a duly convened meeting of the Magoffin County Fiscal Court
held on this the 15th day of July, 2003.

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ALCOHOLIC
BEVERAGE
CONTROL

BILL W. MAY,
Magoffin County Judge/Executive

Motion To Adopt by: _____

Motion Seconded by: _____

GIVEN SECOND READING AND ADOPTED at a duly convened meeting of
the Magoffin County Fiscal Court held on this the ____ day of _____,
2003.

BILL W. MAY
Magoffin County Judge Executive

ATTEST:

HADEN B. ARNETT, Magoffin County Court Clerk

BY: _____

2003 OCT 21 A 10:14
ALCOHOLIC
BEVERAGE CONTROL

ORDINANCE NO. 410.20

**A COMPREHENSIVE REGULATORY ORDINANCE OF THE CITY OF
SALYERSVILLE, KENTUCKY, RELATING TO THE CONTROL,
LICENSING, OPERATION, ADMINISTRATION AND ENFORCEMENT
OF THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES.**

WHEREAS, by ordinance dated January 15, 1986, the City Council of the City of Salyersville, Kentucky, did enact ordinance no. 410.10 relating to the regulation, licensing, operation, administration and enforcement of the sale of alcoholic beverages; and

WHEREAS, the Kentucky General Assembly, during its 1988 regular session adopted Senate Bill No. 273, which provided for the sale of alcoholic beverages by the drink for consumption on the premises in cities of the fourth class where prohibition is not in effect; and

WHEREAS, Ordinance No. 410.10 contains provisions which are consistent and compatible in most areas, but yet are vague and in conflict in others, which said conflicts should be remedied or removed as the case may be by different provision thereunder; and

WHEREAS, the City Council of the City of Salyersville, Kentucky, realizes the need to revise and restructure the ordinance hereinabove specified in order to resolve said conflicts, and to establish a consistent and more definitive regulatory policy governing the sale and consumption of alcoholic beverages whether by the drink or otherwise; and

WHEREAS, the City Council of Salyersville, Kentucky, having determined that an economic hardship exists within the city and that the closely regulated sale of alcoholic beverages by the drink or otherwise could aid economic growth in the city.

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

SECTION 1; This ordinance shall become known and may be cited as the "Economic Development Alcoholic Beverage Control Ordinance" of the City of Salyersville, Kentucky.

SECTION 2: Definitions: Words used through this ordinance, unless the context requires otherwise, shall have the same definitions as 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, unless specifically defined herein.

2.1 "Alcoholic Beverage" means alcoholic brandy, whisky, rum, gin, beer, ale, porter, wine and all other spirituous, venuous, malt or fermented liquors, liquids and compounds, whether medicated, proprietary, patented or not, and by whatsoever name called, containing more than one percent (1%) of alcohol by volume, which are fit for use for beverage purposes.

2.2 "Bona Fide Restaurant" means any retail establishment which derives more than 50% of its gross revenues from the sale of food for consumption on the premises for at least two meals per day, including lunch and dinner, and has a minimum seating capacity as required by law.

2.3 "Carry-out" means any retail establishment which has as its purpose, among other things, the sale of alcoholic beverages for consumption off the premises and for the purposes of this ordinance, shall include retail package liquor stores. It shall include, but not be limited to, grocery stores, markets, express-type markets by whatever name known, bait shops, fruit and vegetable markets, drug stores and similar premises.

2.4 "Distilled Spirits" means any alcoholic beverage, except malt beverage and wine.

2.5 "Malt Beverage" means any fermented undistilled alcoholic bevragage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than one-half of one percent (1%) by volume and not more than 4.8% of alcohol by weight or 6.02% of alcohol by volume.

2.6 "Person" means any natural person, corporation, partnership, joint venture, or unincorporated association of persons or any combination thereof, and the shareholders, offices, agents, servants, and employees thereof.

2.7 "Premises" means the premises described in the City license issued pursuant to the terms hereof and the applications therefore.

2.8 "State" means the Commonwealth of Kentucky.

2.9 "State License" means a license authorized by KRS 243.030 to 243.680.

2.10 "Retail Establishments" means any business for which the primary purpose of existence is the retail sale of alcoholic beverages for consumption on the premises, derives less than 50% of its gross revenues from the sale of food; or any retail business for which the primary purpose of existence is entertainment, and which may, in addition to entertainment, offer food and/or alcoholic beverages for consumption on the premises.

2.11 "Traffic in alcoholic beverages" means any action, business or transaction in regard to the production, storage, transportation, distribution, sale, delivery, and transfer of alcoholic beverages.

2.12 "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions. It includes champagne and sparkling and fortified wine of an alcoholic content not to exceed 24% by volume. It includes preparations of mixtures vended in retail containers if such preparations or mixtures contain not exceeding 15% by volume.

SECTION 3: CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR: APPOINTMENT; DUTIES.

3.1 The City Mayor shall act as Administrator of Alcoholic Beverages, consistent with provisions of KRS 83A.150, (7) (b) and KRS 241.170, (hereinafter referred to as "City ABC Administrator") subject to the approval of the city council of the City of Salyersville, Kentucky, hereinafter referred to as the City Council.

3.2 The functions of the City ABC Administrator shall be the same with respect to city licenses and regulations, as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky (hereinafter called ABC Board) with respect to 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 alcoholic beverage control, or than regulations of the ABC Board. No regulation of the City ABC Administrator shall become effective until it has first been approved by the City Council.

3.3 The City ABC Administrator before entering upon his duties as such, shall take the oath as prescribed by Section 228 of the Constitution and shall execute a bond with a good corporate surety in the sum of not less than \$5,000.00, and shall faithfully perform the duties of his office pursuant to the provisions of Section 62.060 of the Kentucky Revised Statutes, et. seq.

3.4 The costs of the bond given under this Section shall be born by the City of Salyersville (hereinafter the "City").

SECTION 4. LICENSES:

As used in this section, "License" means any premises licensed by the City to sell alcoholic beverages whether by the drink for consumption on the premises or otherwise, and relates to the sale of any combination of the same.

4.1 For the privilege of causing, permitting and engaging in the actions, business, and transactions authorized thereby in regard to traffic in alcoholic beverages in the City of Salyersville and pursuant to the authority of KRS 243.070, there is hereby established a corresponding city license for each of the State Licenses described in the attached schedule. The actions, business, and transactions authorized and permitted thereby and the expiration dates thereof shall be and are the same as those of the State Licenses to which the City Licenses correspond and which are indicated in the attached schedule. The fees for such City Licenses shall be the maximum allowed by law.

4.2 No person shall cause, permit or engage in any of the actions, business, or transactions authorized by such city and state licenses within the city without both a valid city license and a valid state license therefore.

4.3 No person, firm, or corporation conducting a place of business in the city patronized by and open to the general public, or any private club as defined by KRS 243.270, who does not hold the necessary license or licenses, as herein provided, shall permit any person to, or shall he, sell, barter, loan, give away, or drink any alcholic beverages on the premises of his place of business, nor shall any proprietor of any unlicensed premises patronized by and open to the general public, or any agent or employee of that proprietor, have in his possession any alcoholic beverages on any portion of his premises which is open to the general public.

SECTION 5. FORM AND CONTENT OF CITY LICENSE.

5.1 All city licenses shall be in form as may be prescribed by the City Council and shall contain:

- (a) The name and address of the licensee;
- (b) The number of the license;
- (c) The type of license;
- (d) A description by street and number, or otherwise, of the licensed premises.

- (e) The name and address of the owner of the building in which the licensed premises are located;
- (f) The expiration date of the license;
- (g) A statement in substance that the license shall not be a property or vested right and that it may be revoked at any time pursuant to law.

5.2 Each kind of license shall be printed so as to be readily distinguished from the other kind of licenses available.

SECTION 6. APPLICATION FOR LICENSE AND ISSUANCE:

6.1 Subject to the limitations and restrictions described herein, city licenses shall be originally issued by the City Clerk/Tax Collector and renewed by him upon the expiration thereof upon receipt of the following documents and fees more than thirty (30) days prior to the effective date of an original license and more than fifteen (15) days prior to the expiration date of any license to be renewed:

(A) A written application therefore with the truth of the information, statements, and representations therein attested by the signature and oath or affirmation of the applicant. The form and content of such application shall be prescribed by regulation of the City ABC Administrator; however, provision for the following information, statements, and representations shall and must be included therein:

(1) All information required by KRS 243.390 to be contained in the application for state license.

(2) A consent by the applicant to the search of the licensed premises by any peace officer at any time for any purpose, the removal therefrom of any evidence of any crime or other violations of law; and the use thereof in any trial or hearing in regard thereto.

(3) The names, addresses, and ID of the applicant and all shareholders, officers, agents, servants, and employees thereof.

(B) The approval of the applicant, the application, and the premises described therein by the City ABC Administrator.

(C) Documentary evidence of a valid state license which corresponds to the city license for which the application is being made.

(D) The applicable fee for the city license which is the subject of the application.

6.2 Applicants for any license involving the sale, manufacture or traffic of any alcoholic beverage shall first advertise their intention to apply for a license by publishing a Notice of Intention to apply in the local newspaper having the largest circulation at least twice within a thirty (30) day period. The applicant shall be responsible for the publication fees.

6.3 Application by a bona fide restaurant, which meets the qualifications as hereinabove defined, for a license to sell alcoholic beverages by the drink for consumption on the premises shall be accompanied by records sufficient to establish to the City ABC Administrator that the applicant derives a minimum of 50% of its gross revenues from the sale of food for consumption on the premises for at least two meals per day, including lunch and dinner. The City ABC Administrator shall review all records which the applicant restaurant must submit as a part of its application for a license, and the City ABC Administrator shall determine if said restaurant meets the criteria contained herein.

6.4 Application by a hotel, motel or inn for a license to sell alcoholic beverages by the drink for consumption on the premises may be issued if it is found by the City ABC Administrator that said hotel, motel or inn contains not less than fifty (50) sleeping units and has dining facilities for not less than one hundred (100) persons at tables. Upon application, the City ABC Administrator shall immediately inspect personally the premises and file his report with the City Council that said inspection revealed that the applicant in fact had the requisite number of sleeping units and dining facilities and the City Council may thereafter approve the issuance of said license.

6.5 Nothing contained herein shall be in any way interpreted to allow for the sale of alcoholic beverages by the drink for consumption on the premises in connection with any business in which a part of the commercial transaction consists of selling, at retail, staple groceries, or which is used solely as an entertainment facility and does not meet the criteria of a "bona fide restaurant" as defined herein.

6.6 It shall be permissible for a licensee, who under KRS 244.330 is permitted to operate one bar, counter or similar contrivance in said licensed premises under said retail drink license, due to modern business practices and the enhancement of economic development and opportunities, particularly associated with meeting or convention business, and the larger interior areas of some licensees and the recreational facilities directly associated therewith, that it may be necessary to provide for more than one bar within said hotel/motel/inn licensed premises under this ordinance to effectively serve the patrons at such premises. A supplemental bar may be allowed to said hotel/motel/inn licensee if such licensee can show the ABC Administrator the need for such supplemental bar. A supplemental bar license may be issued to a hotel/motel/inn retail drink licensee upon

showing to the City ABC Administrator of good cause and need for the supplemental license, and the license may only be issued for the use on the premises directly associated with the applicant's existing retail drink license as part of the entire business of said license facility.

6.7 Within thirty (30) days of the date of the application for an original city license and fifteen (15) days of the date of any application for renewal of a city license, the City ABC Administrator shall, by mail or personal delivery thereof, notify the applicant, in writing, of either the approval thereof or the disapproval thereof or whether a hearing in regard thereto shall be held thereon.

6.8 As is similarly set forth in KRS 243.450, the City ABC Administrator shall not approve any application for a City license if:

(A) The applicant, the application or the premises described therein do not fully comply with the provisions of this Chapter and all laws in regard to alcoholic beverages;

(B) The applicant and/or any shareholder, officer, agent, servant, or employee thereof has caused, permitted, or engaged in any act for which the revocation or non-issuance of a state or city license is authorized, including, but not limited to, those acts as are defined by KRS 243.100, 243.450, 243.500, or 244.120;

(C) The applicant and/or any shareholder, officer, agent, servant or employee thereof had a state license or city license which was revoked within two (2) years of the date of application, where the premises or any portion thereof described in a state license or city license revoked during such time;

(D) Any state or representation in the application is false; or

(E) In the exercise of sound discretion, the City ABC Administrator determines any cause or reason for refusing to approve any application reasonably related to the purpose and objective of this Chapter and the State Laws and regulations of the State Alcoholic Beverage Control Board. Among those factors that the City ABC Administrator shall consider in the exercise of his discretion are: Public sentiment in the area; Number of licensed outlets in the area; Potential for future growth; Type of area involved; Type of transportation available and, Financial potential of the area.

SECTION 7. PERSONS WHO SHALL NOT LICENSED:

7.1 No person shall become a licensee under this Chapter who

(A) Has been convicted of any felony or misdemeanor directly or indirectly attributable to the use of alcoholic beverages within two (2) years preceding the application;

(B) Is under the age of 21 years;

(C) Is not a citizen of the United States and has not had an actual, bona fide residence in this state for at least one year before the date on which the application for the license is made. This division shall not apply to applicants for manufacturers' licenses, to applicants that are corporations authorized to do business in this state, or to persons licensed on March 7, 1938;

(D) Is a partnership or corporation unless each member of the partnership or each of the directors, principal officers or managers of the corporation or partnership has not been convicted of any misdemeanor or felony directly attributable to the use of alcoholic beverages, is 21 years of age or more, and is a citizen of the United States;

(E) Has had any license issued under KRS 243.100 relating to the regulation of the manufacture, sale and transportation of alcoholic beverages revoked for a cause or has been convicted of a violation of any such statute, until the expiration of two years from the date of the revocation or conviction; or

(F) Is a partnership or corporation, if any member of the partnership or any director or principle officer of the corporation has had any license issued under any statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages, revoked for cause or has been convicted of a violation of any such statute, until the expiration of two years from the date of the revocation or conviction;

(G) No license to sell alcholic beverages shall be granted to any person, firm or corporation who is delinquent in payment of any taxes due to the city at the time of issuing a license; nor shall any license be granted to sell upon any premises or property, owned or occupied by the licensee upon which there are any delinquent taxes due to the city.

7.2 No license to sell alcoholic beverages shall be granted to any person, firm or corporation for the sale of alcoholic beverages on any real property owned or maintained by the City of Salyersville, Kentucky, including, but not limited to, parking lots, sidewalks, roadways, alley ways or streets. The City Council of the City of Salyersville, Kentucky, may authorize such sale upon the exercise of sound discretion.

7.3 No license to sell alcoholic beverages shall be granted to any person, partnership, firm or corporation who has permitted to use, sale or trafficking of controlled substances as described in KRS Chapter 218A, to take place on the premises whether known by the applicant or unknown. Any such use, sale or trafficking of controlled substances as defined by KRS 218A upon any licensed premises may result in the immediate revocation

or suspension of any license issued to said premises, and may further prohibit the named licensee from receiving any license relating to the sale or trafficking of alcoholic beverages within the City of Salyersville, Kentucky, for a period of two years thereafter. Any application who has been convicted of an offense relating to the use, sale or trafficking in controlled substance as defined in KRS 218A, shall not be issued a license under this ordinance for a period of at least two (2) years from the date of such conviction.

SECTION 8. EXCEPTIONS TO LICENSE APPLICATIONS AND HEARINGS:

Any resident of the City of Salyersville may file with the City ABC Administrator Exceptions to an application for the sale of alcoholic beverages for consumption on the premises and the City ABC Administrator shall conduct a hearing upon said Exceptions. The City ABC Administrator shall thereafter reduce his findings and recommendations which shall be presented to the City Council for acceptance, in whole or in part, or rejection in whole or in part. Any party aggrieved by the final action of the City Council may file an appeal with the ABC Board, Frankfort, Kentucky, within thirty (30) days from the action of the council and no license shall be issued until the matter becomes final and non-appealable. The City Council, in the exercise of sound discretion, may direct the City ABC Administrator to issue said license the appeal notwithstanding, if it has been established that the applicant otherwise meets all qualifications as hereinabove specified for issuance of a license for the sale of alcoholic beverages for consumption on the premises.

SECTION 9. HEARINGS:

Should a request for a hearing be made, the City ABC Administrator is to hold said hearing pursuant to the general practice procedures found in the Kentucky Rules of Civil Procedure and the following shall apply:

(A) Definitions: All words are used as defined in the alcoholic beverage control law of Kentucky (KRS Chapters 241, 242, 243, and 244), unless otherwise specified;

(B) Appearances: Any applicant or licensee may appear and be heard in person, or by duly appointed attorney, and may produce under oath evidence relative and material to matters before the Board;

(C) Briefs: Briefs may be filed at the request of the ABC Administrator, or at the option of the applicant or licensee;

(D) Rules of Evidence: The rules of evidence governing civil proceedings in courts of the Commonwealth of Kentucky shall govern hearings before the City ABC Administrator; pro-

vided however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing;

(E) Subpoenas: The City ABC Administrator shall have subpoena power for such hearings and shall at the request of the applicant made with names and addresses of those desired, issue with subpoenas;

(F) Transcripts: Upon request and at the costs of the applicant or licensee the hearing may be transcribed;

(G) Decisions: All decisions shall be written and based upon evidence developed at the hearing.

SECTION 10. EXPIRATION DATE; FRACTIONAL FEES:

All licenses issued pursuant to this ordinance, shall expire on June 30 of each year following the year in which said license was issued. Application for renewal of licenses shall be submitted no later than fifteen (15) days before expiration thereof and shall be made pursuant to Section 6 above.

SECTION 11. TRANSFER OF LICENSE; LOST OR STOLEN LICENSE:

(A) No license issued by the City to sell alcoholic beverages at retail shall be transferrable or assignable to any other person or any other premises, or to any other part of the building containing the licensed premises, unless the transferee of assignee has submitted application to the Administrator and the same has been approved, as provided for in KRS 243.640 and 243.650.

(B) A lost or destroyed license may be replaced by the City Clerk/Tax Collector for a fee of \$10.00 for issuing said duplicate license.

SECTION 12. PREMISES SELLING GROCERIES, GASOLINE, AND THE LIKE PROHIBITED FROM OBTAINING LICENSES:

(A) As prohibited in KRS 243.280, no City license shall be issued to sell malt beverages at retail within or upon any premises from which gasoline and lubricating oil are sold or from which the servicing and repair of motor vehicles is conducted unless there is continuously maintained an inventory on the groceries, and related products valued at costs.

(1) The term "food and groceries" referred to in this division (A) shall mean:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

- (b) Seeds and Plants to grow food for personal consumption.
- (2) This division (A) shall be effective to each malt beverage retail license which is no longer eligible for a retail malt beverage license hereunder upon the expiration of any current license issued by the State Malt Beverage Administrator.
- (3) The provisions of this division (A) shall not apply to any licensed premises which sells no fuel or other marine fuel.

(B) As prohibited in KRS 243.230, no city license shall be issued to sell distilled spirits or wine at retail by the drink or package from any premises used as or in connection with the operation of any business in which a part of the commercial transaction consists of selling at retail staple groceries, or gasoline or lubricating oil.

SECTION 13. PREMISES DOING MAJORITY OF BUSINESS WITH MINORS PROHIBITED FROM OBTAINING LICENSE:

No license shall be issued to any person, firm, or corporation at any store or any place of business where the majority of its business consists of selling school books, school supplies, food, lunches, or drinks to minors or to a business that is a penny arcade or similar establishment that receives the majority of its business from minors, regardless of the distance of that store or other place of business from a church, school, or hospital.

SECTION 14. APPLICANT TO PAY FOR OWN LICENSE:

The license tax for every license issued under this chapter shall be payable by the person who makes application for that license and to whom is issued the license; and no other person, firm, or corporation shall pay for any license issued under this Chapter. In addition to all other penalties provided in this Chapter, a violation of this Section shall authorize and require the revocation of the license, the tax for which was paid by another, and also the revocation of the license, if any, of the person, firm, or corporation so paying the license fees of another.

14.1 Every person, firm, or corporation who sells distilled spirits and wine at retail, within the corporate boundaries of the City shall pay in advance to the City Clerk an annual license fee of six hundred (\$600.00) dollars.

14.2 Every person, firm, or corporation who or which sells at retail any malt beverage within the corporate bound-

aries of the City shall pay to the City Clerk an annual fee of four hundred (\$400.00) dollars. This shall apply to by the drink in "bona fide restaurants" as well as packaged drinks.

14.3 Every person, firm, or corporation who engages in the business of wholesale malt beverage distributor, as defined in KRS 243.280, within the corporate boundaries of the City shall pay in advance to the City Clerk an annual fee of three hundred (\$300.00) dollars.

14.4 Every person, firm, or corporation who engages in the business of wholesale liquor dealer, as defined in KRS 243.170, within the boundaries of the City shall pay to the City Clerk an annual fee of one hundred and fifty (\$150.00) dollars.

SECTION 15. REGULATORY LICENSE FEE:

(A) A regulatory license fee is imposed on the gross retail receipts of alcoholic beverages of each license issued under this Chapter. The license fee for the effective date shall be 5%; thereafter, the City Council may adopt those percentage rates 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. The fee shall be in addition to any other tax, fee, or license permitted by law. No credit for license fees will be allowed on monthly tax returns.

(B) Payment of the fee shall accompany the tax returns for use by the City Council and shall be submitted to the City Clerk by the twentieth (20th) day of each month for the preceeding month's sales.

(C) Failure to pay a monthly remittance within ten (10) days of the due date constitutes a violation for which the license may be suspended or revoked.

(D) Penalty for failure to file a return and pay the monthly remittance by the due date is 20% of the tax for each thirty (30) days or a fraction thereof. The total late filing penalty shall not exceed 25% of the tax; however, in no case shall the penalty be less than 20% of the tax.

(E) Interest at the rate of 20% per annum will apply to any late payments.

SECTION 16. REPORT OF WHOLESALER:

Every wholesaler of alcoholic beverages who sells within the city shall report to the finance director of the City, on a form to be provided by the finance director, the following information:

(A) The names of all retailers to whom alcoholic beverages were sold in the preceding quarter;

(B) The gross revenues received by the wholesaler by each retailer; and

(C) The total quantity of alcoholic beverages sold to each retailer in cans, cases, or kegs, as appropriate, provided that the information provided to the director of finance is calculated to permit the director of finance to determine the quantities of cases, cans and kegs received by each retailer.

SECTION 17. HOURS.

Premises licensed under this ordinance may remain open for business daily from 6:00 A.M. until 12:00 P.M., prevailing time, and shall have their "last call for drinks" prior to this time, except that no sale of alcoholic beverages may be made after 12:00 P.M. on Saturday until 6:00 A.M. on Monday, and said licensed premises shall not sell any alcoholic beverages on Christmas Day (December 25), nor on any election day during the time when the polls are open. All persons except for employees, agents or licensees shall be off the premises no later than one hour after the close of sales.

SECTION 18. COMPLIANCE WITH REGULATIONS AND PROHIBITIONS:

(A) At all times during which any person has a valid city license issued pursuant to the provisions hereof, that person shall fully comply with all the rules, regulations, requirements, and prohibitions set forth in this Chapter.

(B) A city licensee shall comply fully with all of the provisions hereof and all of the rules and regulations of the City ABC Administrator in regard thereto; all provisions of the State Statutes and the rules and regulations of the State Alcoholic Beverage Control Board in regard to the licensed premises and the actions, business, and transactions conducted thereon subsequent to the issuance of a State License therefore and prior to the expiration, revocation, or suspension thereof which are hereby incorporated herein and made applicable to all city licenses corresponding thereto, the premises described therein, and the actions, business, and transactions conducted thereon; and the city licensee shall comply fully therewith.

SECTION 19. MAINTENANCE OF STATE LICENSE:

A city licensee shall maintain the state license to which the city license corresponds and fully comply with all state statutes and the rules and regulations of the State Alcoholic Beverage Control Board in regard thereto.

SECTION 20. DISPLAY OF REQUIRED LICENSES AND CERTAIN SIGNS:

As required by KRS 244.083, a City Licensee who has a valid city retail distilled spirits, wine, or malt beverage license shall cause to be displayed in a conspicuous and prominent place on the licensed premises. Each of the following documents so that they may be seen and observed by all persons entering the licensed premises:

(A) A sign or place card at least 8 inches x 11 inches in size with the following message printed or displayed thereon in 30. or larger type:

"Persons under the age of 21 years are subject to a fine up to Five Hundred Dollars (\$500.00) if they:

(a) Enter licensed premises to buy or to have served or delivered to them any alcoholic beverages; or

(b) Possess or purchase to attempt to purchase any alcoholic beverages; or

(c) Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages."

(B) All valid city licenses issued therefore and the state licenses to which they correspond. The failure to so display such licenses shall be prima facie evidence that no such valid licenses have been issued or exist and all actions, business, and transactions authorized thereby conducted on such premises are illegal and in violation of the provisions hereof and the state statutes and regulations of the State Alcoholic Beverage Control Board in regard thereto.

SECTION 21. CRIMINAL CONDUCT ON PREMISES PROHIBITED:

A City Licensee shall not cause, permit, or engage in any conduct upon the licensed premises by either the commission of a prohibited act or the omission of a required act which is a crime or other violation of any law, rule, or regulation of any governmental agency having jurisdiction thereof or any officer or agency thereof. Any such conduct upon the licensed premises by any person may result in the immediate revocation or suspension of the license, and may subject the licensee to other penalties as more specifically

set out hereafter.

SECTION 22. CONDITIONS, PROHIBITIONS AND RESTRICTIONS:

All licenses granted under this ordinance shall be subject to the following conditions, prohibitions and/or restrictions and all other provisions of KRS 241, 242, 243, and 244, other ordinances and regulations of the City applicable thereto:

(A) Every licensee hotel/motel/inn shall be entitled to serve such beverages as said licensee is entitled to serve upon the issuance of a license under this ordinance and in such room or rooms at banquets, dinners and where meals are served; however, no hotel/motel/inn shall maintain or operate or permit to be operated more than one bar or room where alcoholic beverages are sold which is open to the general public without first obtaining a separate license for each bar or room which is open to the general public in accordance with this ordinance.

(B) Each licensed premises shall at all times be conducted in an orderly manner and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises and no nuisance suffered, permitted or maintain thereon.

(C) No gambling or game of chance 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.

(D) It shall be unlawful for any licensee licensed under this ordinance to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from the Salyersville City Police Radio Station as it is now or may hereinafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or City Administrator shall have the authority to confiscate any and all such radio receiving apparatus.

(E) It shall be unlawful for any licensee under this ordinance to sell, to smoke or keep or permit to be sold, smoked or kept upon the licensed premises any marijuana or controlled substances as defined in KRS 218A. It shall be unlawful for a licensee except licensed drug stores, to keep or sell or permit to be sold or used on the licensed premises any narcotic or barbituate drugs. In addition to other penalties set out in this ordinance for the violation of this section, the City ABC Administrator shall also have the authority to revoke the license issued to said premises.

(F) The licensee shall be responsible for maintaining security on his premises which shall include 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 premises. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

(G) No license shall be issued to any person, firm or corporation for the sale at retail of any alcoholic beverages at any store or any other place of business where the majority of its business consists of the selling of school books, school supplies, food, lunches or drinks for such minors irrespective of the distance of such store or other place of business from the church, school or hospital.

(H) It shall be unlawful for any licensee under this ordinance to give away or offer to give away anything tangible of value as a premium or prize in connection with the sale of alcoholic beverages.

(I) 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.

(J) No licensee or agent or employee shall permit any person or persons, other than employees of the licensee, to open any bottle of distilled spirits, wine or malt beverages, and no container of distilled spirits, wine or malt beverages shall be opened nor its contents consumed on the licensed premises unless the licensee holds a retail drink license.

(K) No person under twenty-one (21) years of age shall enter any premises that is licensed for the sale of alcoholic beverages by the drink for the purpose of purchasing and receiving any alcoholic beverages. 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 beverage by the drink; 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 by the drink; 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 to sell or serve any alcoholic beverages to such person. 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 document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

**SECTION 23. BUSINESS TO BE CONDUCTED CONTINUOUSLY;
EXCEPTIONS:**

(A) A city licensee who has a valid city wholesale or retail distilled spirits, wine or malt beverage license must conduct the actions, business and transactions authorized thereby upon the licensed premises:

(B) When no such actions, business or transactions are conducted thereon for a period of ninety (90) consecutive calendar days, the city license therefore shall become null and void and revoked by the City ABC Administrator unless;

(1) The city licensee is unable to continue in business at the premises for which a license is issued due to an act of God; casualty, the acquisition of the premises by any Federal, State, City or other governmental agency under power of eminent domain; acquisition of any private corporation through the power of eminent domain granted to it, whether such action is voluntary or involuntary; or a loss of lease through failure of the landlord to renew the existing lease; and

(2) Prior to the discontinuance of the business at the licensed premises or immediately thereupon if such is due to an act of God, the city licensee delivers to the City ABC Administrator a written statement signed by the City Licensee and verified by the oath or affirmation thereof indicating the discontinuance of business at the licensed premises for any of the causes or reasons described herein.

SECTION 23. SALES TO BE CONDUCTED OPENLY:

No person holding a license under the provisions of this Chapter shall sell any alcoholic beverages behind blinds or screens. All sales shall be conducted openly and without any attempt to hide them or screen them from public view.

SECTION 24. RIGHT OF ENTRY:

Search and Seizure:

Every applicant procuring a license hereby consents to the entry of police or other duly authorized representatives of the city or state at all reasonable hours for the purposes of inspection and search, and consents to the removal from the premises of all things and articles there had in violation of city ordinances or state laws, and consents to the introduction of those things and articles in evidence in any prosecution that may be brought for those offenses.

SECTION 25. SUSPENSION, REVOCATION OF LICENSE:

(A) Pursuant to the procedure set forth in KRS 243.480 through 243.590, City licenses may be either revoked or suspended by the City ABC Administrator upon the occurrence of:

- (1) Any violations of the provisions of this Chapter or ordinance or any other alcoholic beverage control ordinance of the city.
- (2) Any violation of any provision of state law in regard to alcoholic beverages or other rules and regulations of the State Alcoholic Beverage Control Board in regard thereto; or
- (3) Any other cause, reason or circumstance for which a state license may be revoked or suspended by the Board.

(B) However, city licenses must be revoked by the City ABC Administrator upon the occurrence of any cause or circumstance which requires revocation of state licenses pursuant to KRS 243.500 or the revocation of a state license which a City License corresponds. Further, with the approval of the City ABC Administrator, a licensee may, as an alternative and in lieu of part or all of the days of any suspension, pay the following sums to the city as set forth in KRS 243.480: Distillers, rectifiers, vendors, brewers, and blenders: \$1,000.00 per day; Wholesale Liquor Licensees: \$400.00 per day; Wholesale Beer Licensee: \$100.00 per day; Retail Drink Liquor Licensees: \$25.00 per day; Retail Package Liquor Licensees: \$25.00 per day; Retail Beer Licensees: \$10.00 per day; and all remaining licensees: \$10.00 per day.

(C) The procedure for the revocation or suspension of a city license shall consist of a written notice signed by the City ABC Administrator and mailed to the licensee at the address of the licensed premises by Certified Mail, describing the cause, circumstance or occurrence and the time and date thereof for which the city license may be revoked and indicating the time and place of a hearing in regard thereto at least five days thereafter at which the licensee and the representatives thereof shall be heard thereon. The hearing shall be conducted by the City ABC Administrator and the City Council in the city and according to the procedures herein above specified for hearings, and in accordance to the procedure prescribed by the State Alcoholic Beverage Control Board for hearings by the Board as supplemented by the regulations of the City ABC Administrator. The City ABC Administrator shall control and make all decisions in regard to the introductions of evidence and shall hear all arguments

in regard thereto. At the conclusions of the hearing, the City ABC Administrator shall issue a written decision in regard thereto and mail a certified copy thereof to the licensee at the address of the licensed premises by certified mail or registered mail.

SECTION 26. PENALTIES:

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

(A) Any person, firm or corporation that holds a license for the retail sale of alcoholic beverages who knowingly provides, by sale or gift, directly or indirectly, alcoholic beverages for the use or consumption by any one under the age of twenty-one (21) years, shall for the first offense, be fined in the sum of \$500.00, and shall have his license suspended for a period of seven days; and for the second offense, his license shall be suspended for a period of fourteen days, and he shall forfeit his bond made at application for the license; and for the third offense shall be subject to a fine of \$2,000.00 and revocation of his license.

(B) Any person twenty-one (21) years of age or older, not being a licensee, who shall provide, by sale or gift, alcoholic beverages for the use and consumption by person or persons under the age of twenty-one (21) years shall be fined, for each offense, the sum of \$500.00.

(C) Any person who violates any provision of this ordinance for which a penalty is not otherwise provided, shall be fined not less than \$10.00 or more than \$500.00, or imprisoned in the regional jail for not more than six months, or both.

SECTION 27. SEVERABILITY:

Action by a court of competent jurisdiction declaring any section, sub-section, phrase or word in this ordinance to be invalid, unconstitutional and/or void shall not affect the remainder of this ordinance which shall remain in force and effect.

SECTION 28. FORCE AND EFFECT:

This ordinance shall be in force and effect, as of the date of passage of Ordinance No. 410.20, nunc pro tunc, on the 17th day of September, 1990.

SECTION 29. CONFLICTS:

All Ordinances or any parts in conflict with the provisions herein are expressly repealed to the extent of such conflict.

First reading of Ordinance September 10, 1990

Second reading and final adoption this 17th.
day of September, 1990.

CITY OF SALYERSVILLE, KENTUCKY

BY W. Joe Howard
W. JOE HOWARD, MAYOR

ATTEST:

Carlotta Howard
CARLOTTA HOWARD, CITY CLERK