

**MAGOFFIN COUNTY, KENTUCKY**  
**ORDINANCE NO. 01-2014**

**AMENDED ORDINANCE RELATING TO THE REGULATORY LICENSE FEE UPON  
THE SALE OF ALCOHOLIC 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 alcoholic beverages” in Magoffin County, Kentucky; and

**WHEREAS**, the 2013 Kentucky General Assembly by and through Senate Bill 13, substantially amended KRS Chapters 242, 243 & 244, including KRS 243.075 which authorizes the governing body of a county containing 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**, pursuant to KRS 244.290(1)(a) and KRS 244.480(3)(a) the Magoffin County Fiscal Court is authorized to regulate the sale of alcoholic beverages on election day; 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 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 and this

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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:**

**SECTION I**

**MAGOFFIN COUNTY QUOTA RETAIL PACKAGE LICENSE & NON-QUOTA  
RETAIL MALT BEVERAGE LICENSE**

1. Upon receiving a Kentucky Quota Retail Package License or Kentucky Non-Quota Retail Malt Beverage License from the Commonwealth of Kentucky Department of Alcohol Beverage Control, the licensee shall make application to the Magoffin County Alcoholic Beverage Control Administrator for the corresponding Magoffin County Quota Retail Package License or Magoffin County Non-Quota Retail Malt Beverage License. The application shall be filled out fully and completely, according to the instructions provided to the licensee in the application packet. The application shall be returned to the Magoffin County Alcoholic Beverage Control Administrator who shall review the application within ten (10) business days. If the application is properly completed and accompanied by the correct fee, the Magoffin County Alcoholic Beverage Control Administrator shall issue a license to the applicant.

**MAGOFFIN COUNTY QUOTA RETAIL PACKAGE LICENSE & NON-QUOTA  
RETAIL MALT BEVERAGE LICENSE FEES**

2. The fee for the Magoffin County Quota Retail Package License shall be set at \$150.00 per year and the Magoffin County Non-Quota Retail Malt Beverage License shall be set at \$300.00 per year. The license fee shall be paid to the Magoffin County Alcoholic Beverage Control Administrator who shall forward the proceeds to the Magoffin County Treasurer.

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**MAGOFFIN COUNTY QUOTA RETAIL PACKAGE LICENSE & NON-QUOTA  
RETAIL MALT BEVERAGE LICENSE PERIOD & RENEWAL**

3. Beginning April 30<sup>th</sup>, 2014, all Magoffin County Quota Retail Package Licenses and Magoffin County Non-Quota Retail Malt Beverage Licenses shall come due during the month of April, to be renewed by April 30<sup>th</sup> of each year. During the transition period any license that was not scheduled to become due until after April 30<sup>th</sup>, 2014 will be pro-rated for the 2014-15 license year and shall receive credit for any and all renewal fees previously paid.

**PENALTIES**

4. Any licenses not renewed by April 30<sup>th</sup> of each year will be assessed a \$100 late fee.

**JURISDICTION**

5. In instances in which a city located in Magoffin County, Kentucky has issued a city Quota Retail Package License or Non-Quota Retail Malt Beverage License as described in KRS 243.070 during the same license year, per KRS 243.060(5) the licensee may receive a credit towards their county license fee in the amount equal to the fee paid for their city license. In all other incorporated or unincorporated areas in Magoffin County, Kentucky, the Magoffin County Fiscal Court shall have exclusive jurisdiction to issue and collect fees for Quota Retail Package Licenses and Non-Quota Retail Malt Beverage Licenses.

**STATUTORY AUTHORITY & PURPOSE**

6. The statutory authority for the Magoffin County Fiscal Court and Magoffin County Alcoholic Beverage Control Administrator to issue and regulate Quota Retail Package Licenses and Non-Quota Malt Beverage Licenses in Magoffin County, Kentucky is set forth in those powers granted by KRS 243.060, KRS 67.080 and KRS 67.083. The imposition and levy of these licenses and fees for the sale of alcoholic beverages in Magoffin County, Kentucky by the

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Magoffin County Fiscal Court 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**

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

## **SECTION II**

### **IMPOSITION OF REGULATORY LICENSE FEE**

1. In addition to those license fees authorized by 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 Quota Retail Package License, Non-Quota Retail Malt Beverage Package License and/or any other license authorized and set forth in KRS 243.060, as it is currently enacted and from time to time amended.

### **PERIOD & RATE**

2. The regulatory license fee upon the sale of alcoholic beverages established by the first passage of this ordinance will remain in effect, 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.

### **PAYMENTS**

3. Payments of the regulatory license fee established by this Ordinance shall be made

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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 (15<sup>th</sup>) 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 licensee 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**

4. 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 with 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

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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**

5. In instances in which a city located in Magoffin County, Kentucky and described in 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**

6. 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.

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### **EFFECTIVE DATE**

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

### **SECTION III**

#### **SALES ON ELECTION DAY**

1. Pursuant to KRS 244.290(1)(a) and KRS 244.480(3)(a) the sale of alcoholic beverages in Magoffin County, Kentucky on any primary, or regular, local option, or special election day shall be prohibited during the hours in which the polls are open.

#### **PENALTIES**

2. Any violation of Section III of this ordinance shall result in a \$100 fine.

#### **JURISDICTION**

3. Pursuant to KRS 244.290(1)(c)(2) and KRS 244.480(3)(c)(2) Section III of this ordinance shall pertain only to the areas of Magoffin County outside of the jurisdictional boundaries of Salyersville, Kentucky, including all other incorporated and unincorporated areas in Magoffin County, Kentucky.

#### **STATUTORY AUTHORITY & PURPOSE**

4. The Magoffin County Fiscal Court is authorized to regulate the sale of alcoholic beverages on election days per KRS 244.290, KRS 244.480, KRS 67.080 and KRS 67.083. The purpose of this section is to ensure election officials are able to administer elections in an orderly and uninterrupted fashion, thereby allowing all citizens of Magoffin County, Kentucky to participate in the election process without unnecessary interruptions and distractions.

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**EFFECTIVE DATE**

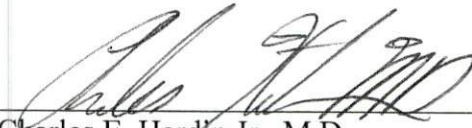
5. This Magoffin County Ordinance shall become effective upon its Second Reading, adoption and passage, as required by law.

Motion To Adopt by: Charles Hardin

Motion Seconded by Gary Risner

**INTRODUCED, SECONDED, AND GIVEN FIRST READING AND APPROVAL**

at a duly convened meeting of the Magoffin County Fiscal Court held on this the 19 day of November, 2013.

  
Charles E. Hardin Jr., M.D.  
Magoffin County Judge Executive


Motion To Adopt by: Charles Hardin

Motion Seconded by Gary Risner

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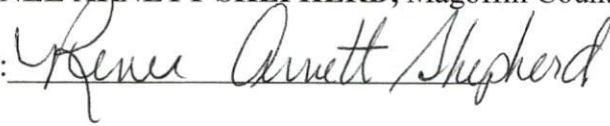


**GIVEN SECOND READING AND ADOPTED** at a duly convened meeting of the  
Magoffin County Fiscal Court held on this the 29 day of January, 2014.

  
Charles E. Hardin Jr., M.D.  
Magoffin County Judge Executive

ATTEST:

**RENEE ARNETT SHEPHERD**, Magoffin County Court Clerk

BY: 

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**SECTION 10. EXPIRATION DATE; FRACTIONAL**

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 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) Seed 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 boundaries 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 preceding 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 Sunday 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 sale.

#### 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, or 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

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 applicant 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 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 Procedures 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; provided however, that the hearing officer may relax such rules in any case where, in his judgement, 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 name 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.



(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 were revoked during such time;

(D) Any statement 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 BE 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 alcoholic 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

other violation of a 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 substance 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 barbiturate 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 em-



ployees of t nsee, to open any bottle of distilled spirits, wine or 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 imminent domain; acquisition of any private corporation through the power of imminent 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 24. 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 25. RIGHT OF ENTRY*

#### *Search and Seizure:*

Every applicant procuring a license hereby consents to the entry of police or other duly authorized representative of the city or state at all reasonable hours for the purpose 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 as evidence in any prosecution that may be brought for those offenses.

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- (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 alcohol 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 and 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:



4.1 For the privilege of causing, permitting and engaging in the active 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 alcoholic 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

### SE V 26. 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 Licensees: \$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 27. 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 28. 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 29. 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 30. 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

2.5 "Malt Beverage" means any fermented undistilled alcoholic beverage 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.



**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 provisions 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.

**ORDINANCE NO. 410.30**

**AN ORDINANCE OF THE CITY OF  
SALYERSVILLE, KENTUCKY, REQUIRING APPLICANTS  
FOR A RETAIL PACKAGE LIQUOR LICENSE TO  
MAINTAIN 90% OF THE BUSINESS' GROSS RECEIPTS  
FROM THE SALE OF ALCOHOLIC BEVERAGES**

**WHEREAS**, the City of Salyersville, Kentucky, desires to regulate the sale of alcohol in such manner as to promote the health, safety and welfare of the citizens of Salyersville, Kentucky;

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

**SECTION 1.**

No retail package liquor license shall be issued to any person who does not receive at least 90% of its gross receipts from the sale of alcohol.

**SECTION 2.**

An applicant for a retail package liquor license shall certify under oath that 90% of the total projected gross receipts from sales made at the licensed premises during the 12-month period following the issuance the license shall consist of the projected gross receipts from sales of alcoholic beverages. No retail package liquor license shall be renewed for any licensee unless 90% of the licensee's total gross receipts from sales for the immediate past month and the immediate past 12 months consists of gross sales from the sale of alcoholic beverages.

**This Ordinance**, upon proper passage and publication, will be in addition to Ordinance Number 410.20, regulating the sales and taxes for alcoholic beverages license.

Introduced, seconded and given first reading at a duly convened meeting of the City Council of the City of Salyersville, Kentucky, held on this the 18th day of September, 1995. Second vote on ordinance at a meeting held on the 17th day of October, 1995.

Approved:

W. Joe Howard  
W. JOE HOWARD, MAYOR  
CITY OF SALYERSVILLE, KENTUCKY

Attest:

Carlotta Howard  
CARLOTTA HOWARD, CITY CLERK

DATE OF PUBLICATION: 10/26/95

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*

First reading of this Ordinance was held on September 10, 1990.

Second reading and final adoption September 17, 1990.

CITY OF SALYERSVILLE, KENTUCKY

Walter Joe Howard

Mayor

Attest:

Carlotta Howard

City Clerk

Published in summary form. A full copy is available in the Office of the City Clerk and may be reviewed Monday thru Friday from 8 a.m. until 4 p.m.



AN ORDINANCE REGULATING THE SALE OF  
ALCOHOLIC BEVERAGES WITH THE CITY  
OF SALYERSVILLE, KENTUCKY

RECEIVED  
APR 3 9 23 AM '86  
ALCOHOLIC  
BEVERAGE CONTROL

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

DEFINITIONS

This chapter shall be known as and may be cited as the  
"Alcoholic Beverage Control Ordinance" of the City of  
Salyersville, Kentucky.

Section 1.1

The term "alcoholic beverage" means alcoholic brandy, whiskey, rum, gin beer, ale, porter wine, and all other spiritous vinous, malt of fermented liquors, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing more than one percent (1%) of alcohol by volume, which are fit for use as beverage purposes.

a. "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute from malt, and having an alcoholic content greater than one-half of one percent by volume and not more than 4.8 percent of alcohol by weight, or 6.02 percent of alcohol by volume.

b. "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne, sparkling and fortified wine of an alcoholic content not exceeding twenty-four percent (24%) by volume. It includes preparations or mixtures vended in retail containers if such preparations or mixtures contain not exceeding fifteen percent (15%) of alcohol by volume.

c. "Distilled spirits" means any alcoholic beverage, except malt beverage and wine.

### Section 1.2

The term "person" shall be construed to include within it's meaning a "person," "firm," "partnership," "association," "company," corporation," or "fraternal order."

### Section 1.3

The term "distributor" shall mean any person who distributes malt beverage, or distilled spirits, for the purpose of being sold at retail.

### Section 1.4

The term "retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required.

### Section 1.5

The term "carry out" means any retail establishment which has as it's purpose, among other purposes, the sale of alcoholic beverages for consumption off the premises and for the purposes of this Ordinance, shall include retail package liquor stores. The term "carry out" 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.

## LICENSES

The following classes of licenses are hereby created and subject to be issued subject to all terms, conditions and qualifications as set out herein.

### Section 2.1

Retail Package Liquor License, which shall authorize the retail sale of legal distilled spirits and wine for consumption other than on the premises.

### Section 2.2

Retail Malt Liquor Beverage, which shall authorize the retail sale of malt beverages.

### Section 2.3

Malt Beverage Distributor's License, which shall authorize wholesale traffic of malt beverages to Retail Malt Beverage Licenses.

### Section 2.3-1

Wholesale Liquor License which shall authorize the wholesale traffic of distilled spirits and wine to Retail Package Liquor Licenses.

The license to be issued under the classifications set out herein shall be restricted in number as follows:

### Section 2.4

No city licenses shall be granted until after a license has been issued by the Commonwealth of Kentucky.

### Section 2.5

No license shall be issued to any person or persons not a full citizen of the United States and who has not resided continuously in the Commonwealth of Kentucky and in Magoffin County, Kentucky, for at least one (1) year prior to the filing of an application for a license; excepting, however, that a corporation shall be deemed to meet the requirements of this section if it has been doing business in Magoffin County, Kentucky, continuously for one (1) full year prior to the filing of an application, or if all stockholders of the corporation meet the requirements of this section. Further, the requirements of this section relative to residency in Magoffin County, Kentucky, shall not apply to Wholesale Liquor or Malt Beverage Distributor Licenses.

### Section 2.6

No license shall be issued to any person who has been convicted of an alcohol related felony or any other felony within two (2) years prior to the filing of an application with the City.

### Section 2.7

The provisions of this section shall not apply to a corporation but such provisions shall apply to all officers, directors, and any person who is to manage or conduct the business premises.



### Section 2.8

No license shall be granted to any person under twenty-one (21) years of age.

### Section 2.9

No license shall be granted to a corporation if more than ten percent (10%) of the stock therein is held by any person not eligible for a license under this Ordinance, except as otherwise provided in Section 2.5.

### Section 2.10

No license issued by the City of Salyersville, Kentucky, to sell alcoholic beverages at retail shall be transferable or assignable to any other person or any other premises, or to any other part of the building containing the licensed premises, unless the transferree or assignee has submitted application to the local administrator and the same has been approved, and as provided for in K.R.S. 243.640 and K.R.S. 243.650.

### Section 2.11

License issued pursuant to this Ordinance shall be posted while in force in a conspicuous place in the room or place where alcoholic beverages are kept for sale. A lost or destroyed license may be replaced by the City Clerk for five (\$5.00).

### Section 2.12

All licenses granted hereunder shall be subject to the conditions of this and other ordinances of the City of Salyersville, Kentucky.

### Section 2.13

Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the City or State at all hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of City Ordinances or State Laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.

#### Section 2.14

No license to sell alcoholic beverages shall be granted to any person, firm, or corporation who or which is delinquent in payment of any taxes, due to the City at the time of issuing said license; nor shall any license be granted to sell upon any premises or property, owned and occupied by the licensee, upon which there are any delinquent taxes due to the City.

#### Section 2.15

All licenses, issued under this chapter shall expire on the 30th day of June of each year and the fees therefore shall be due and payable on the 1st day of July of each year.

#### Section 2.16

The license tax for every license issued under this chapter shall be payable by the person making application for such license and to whom is issued such license; and no other person, firm or corporation shall pay for any license issued under 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 for the license of another.

#### Section 2.17

All License Fees from licenses issued under this chapter shall be collected by the City Clerk.

#### Section 2.18

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

#### Section 2.19

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 dollars (\$600.00) or maximum allowed by law.

#### Section 2.20

Every person, firm, or corporation who or which sells at retail any malt beverage within the corporate boundaries of the City for consumption, off the licensed premises shall pay to the City Clerk an annual fee of four hundred dollars (\$400.00) or the maximum allowed by law.

#### Section 2.21

Every person, firm, or corporation who engages in the business of wholesale malt beverage distributor, as defined in K.R.S. 243.180, within the Corporate Boundaries of the City shall pay in advance to the City Clerk an annual fee of one hundred and fifty dollars (\$150.00), or the maximum allowed by law.

#### Section 2.22

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

#### Section 2.23

For the purposes of Sections 2.21 and 2.22, a person shall be deemed to be engaged in the business described therein if that person, firm, or corporation solicits business, or makes delivery within the Corporate Boundaries of the City of Salyersville, Kentucky.

#### Section 2.24

The local Administrator shall not have authority, nor shall any provision of this ordinance be interpreted to grant him authority to issue special temporary licenses as described in K.R.S. 243.290.

#### Section 2.25

All City Licenses shall be in such form as may be prescribed by the Board of City Council and shall contain:

- a. The name and address of the licensee;
- b. The number of the licensee;



- 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;
- h. Each kind of license shall be printed so as to be readily distinguished from the other types of licenses.

### MISCELLANEOUS REGULATIONS

#### Section 3.1

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.

#### Section 3.2

No person, firm, or corporation licensed to sell alcoholic beverages at retail shall permit any person or persons to open any bottle of distilled spirits, wine, or malt beverages nor allow it's contents to be consumed on the licensed premises .

#### Section 3.3

No person, firm, or corporation who holds a license to sell any alcoholic beverage 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.

#### Section 3.4

No alcoholic beverages, as defined in this Ordinance, shall be sold prior to 6:00 a.m., nor after 12:00 p.m.,

prevailing time, nor on Sunday, Christmas Day, or on any election day during the time when the polls are open.

### Section 3.5

No retailer, as defined in this Ordinance shall permit the consumption of alcoholic beverages on the premises.

### Section 3.6

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

### Section 3.7

A violation of this Ordinance by a duly authorized agent or employee of a licensee or a licensee shall constitute a violation of the license and whenever the holders of any license under this Ordinance shall violate any portion of the Ordinance or any regulation adopted pursuant thereto, the local administrator shall suspend or revoke such license.

### Section 3.8

Every wholesale distributor of alcoholic beverages who sells within the City of Salyersville, Kentucky, shall report to the finance director of the City of Salyersville, on a form to be provided to him the following information:

- a. The names of all retailers to whom alcoholic beverages were sold in the preceeding quarter;
- b. The gross revenues received by the distributor from each retailer;
- 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, kegs, received by each retailer.



## REGULATORY LICENSE FEE

### Section 4.1-

a. A regulatory license fee is imposed on the gross receipts of sale of alcoholic beverages of each license issued under Section 2. Said license fee for the effective date shall be five percent (5%); thereafter, the Board of City Council shall adopt at the budget adoption for the fiscal year 1986-87, and each year thereafter, such percentage rates as shall be reasonably estimated to insure full re-imbursement to the City for the cost of additional policing, regulatory or administrative expenses, related to the sale of alcoholic beverages. Such fee shall be in addition to any other tax, fee or license permitted by law, but a credit against such fee shall be allowed in an amount equal to the license or fee imposed under Section 2 and such regulatory fee shall be applied annually from date of issue of license.

b. Payment of such fee shall accompany the tax returns for such use by the Board of City Council and shall be submitted to the City Finance Director by the 20th day of each month for the preceeding month's sales, one-twelfth (1/12) of the fee required under Section 2 shall be deducted each month as a credit.

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

d. Penalty for failure to file a return and pay monthly remittance by the due date is twenty percent (20%) of the tax for each thirty (30) 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 percent (20%).

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

## PENALTIES

### Section 5.1

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 anyone under the age of twenty-one (21) years, shall for the first offense, be fined the sum of five hundred dollars (\$500.00) and shall have his license suspended for a period of seven (7) days; and for the second offense, his license shall be suspended for a period of fourteen (14) days, be fined the sum of one thousand dollars (\$1,000), and he shall forfeit his bond made at application for the license; and for the third offense he shall be subject to a fine of two thousand dollars (\$2,000.00) and the revocation of his license.

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

#### Section 5.2

Any person who violates any provision of this Ordinance for which a penalty is not otherwise provided shall be fined the sum of one hundred dollars (\$100.00) for each offense.

#### Section 5.3

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 in K.R.S. 243.270, who does not hold the necessary license or licenses, as herein provided, shall permit any person, nor shall himself, sell, barter, loan, give away or drink any alcoholic beverages on the premises of his place of business, nor shall any proprietor of any such unlicensed premises patronized by and open to the general public or any agent or employee of such proprietor, have in his possession any alcoholic beverages on any portion of his premises which is open to the general public. Any such sale, barter, loan, gift, or unlawful possession shall render the proprietor of such premises or the person making such sale, loan or gift or having illegally in his possession such alcoholic beverages, or both, liable to a fine of five hundred dollars (\$500.00).

#### Section 5.4

Upon notice of a suspension of a license by the local administrator, the licensee, with the consent of the local administrator, may, in lieu of the suspension, pay to the City of Salyersville, the sum of one hundred dollars (\$100.00) per day for each day of suspension; however,



notwithstanding anything contained herein, this section shall not apply to any suspensions under Section 5.1.

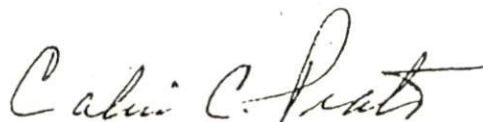
SEVERABILITY

Section 6.1

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

The City Clerk is directed to publish this Ordinance ~~by reference and not~~ in its entirety.

PASSED AND ADOPTED, this the 15th day of January, 1986,  
by the Board of City Council.



CALVIN PRATER  
MAYOR, CITY OF SALYERSVILLE,  
KENTUCKY

ATTEST:



CARLOTTA HOWARD  
CITY CLERK, CITY OF SALYERSVILLE, KENTUCKY