

**City of Smithland**  
**Alcohol by the Drink**  
**Ordinance No: 2011-01**

**I. PURPOSE**

It is the purpose of this Chapter to promote economic development and tourism within the City by making provision for the sale of alcoholic beverages by the drink at certain restaurants and dining facilities in a manner consistent with the local option election heretofore conducted pursuant to KRS Chapter 242.

**II. DEFINITIONS**

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

**III. INCORPORATION OF STATE LAW**

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

**IV. SCOPE**

This Chapter shall be construed to apply to the sale of alcoholic beverages by the drink at restaurants and dining facilities within the City of Smithland which seat a minimum of one hundred (100) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food.

**V. FOOD SERVICE REQUIREMENT**

All license holders under this Chapter shall be required to maintain food service during all hours that alcohol is served.

## **VI. CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR**

(A) The City Alcoholic Control Administrator (the "City Administrator") shall be appointed by the Mayor with the consent of a majority of the members of the City Council, and may be removed by the Mayor with or without cause. No conflict of interest shall be deemed to arise if the individual appointed as City Administrator is also employed by the City in some other capacity.

(B) The City Administrator and his assistants and investigators shall have the full police powers of peace officers, and their jurisdiction shall be coextensive with the boundaries of the City. They, and any City law enforcement officer, may inspect any premises where alcoholic or malt beverages are sold, stored, or otherwise trafficked without first obtaining a search warrant.

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

(D) The City Administrator shall have the same powers and duties with respect to suspension and revocation for cause of City licenses as the State Alcoholic Beverage Control Board has with respect to state license under KRS 241.060. The City Administrator, on his own initiative or on the complaint of any person, may institute proceedings to revoke or suspend any license issued under this ordinance

## **VII. LICENSE**

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

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

1. Such restaurants and dining facilities shall seat a minimum of 100 persons.
2. Restaurants and dining facilities licensed under this Chapter shall have articulated and convincing reasons to anticipate that they will derive a minimum of 70% of their gross receipts from the sale of food as certified by periodic documentation as herein required.

## VIII. LICENSE APPLICATION

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

(B) Applicants for a license under this Chapter shall pay a license fee of \$800.00.

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

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

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

## IX. LICENSE

The City licenses shall be issued and the fees collected by the City Clerk. That official shall report and pay to the City treasurer at the end of each month such license fees as he/she has collected.

## X. PERIODIC INFORMATION TO BE PROVIDED BY LICENSEE

(A) Applicants to whom a license is issued authorizing the sale of alcoholic beverages pursuant to this Chapter shall provide periodic information demonstrating compliance with the continuing requirement that 70% of the applicant's gross income is earned from the sale of food. Such information shall be provided on or before March 31 and on or before September 30 of each year, and shall consist of a certificate from a certified public accountant familiar with the applicant's pertinent business records, which shall state:

“I have conducted a limited scope audit according to accepted accounting principles of the pertinent records of \_\_\_\_\_, licensee under City of Smithland Ordinance No. \_\_\_\_\_, and certify that the licensee earned at least 70% of its gross receipts from the sale of food during the half year ending (March 1 or September 1).”

(B) The certificate shall contain a brief description of the methodology used in the determination of the certified percentage.

## **XI. LICENSE RENEWAL**

The license issued pursuant to this Chapter shall authorize the sale of alcoholic beverages until the next following June 30. The license may be renewed annually thereafter upon a showing that the criteria therefor have been met, the filing and approval of a renewal application, and the payment of a renewal fee.

## **XII. REGULATORY LICENSE FEE IMPOSED**

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

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

(C) Payment of the Regulatory License Fee shall accompany tax returns approved for use by the City Administrator, submitted to the City Clerk by the 20<sup>th</sup> day of each month for the preceding month's sales. There shall be a monthly credit of \$66.66, representing the pro rata portion of the initial license cost for which provision is made in this Chapter.

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

## **XIII. ADDITIONAL RESTRICTIONS ON SALE BY LICENSEE**

At no time shall any alcoholic beverage be sold between the hours of 12:00 a.m. (midnight) and 6:00 a.m., Monday through Saturday, not between 12:00 a.m. (midnight) on Saturday and 6:00 a.m. on Monday.

### **XIII. CAUSE FOR REFUSAL TO ISSUE OR RENEW LICENSE AND FOR SUSPENSION AND REVOCATION OF LICENSE**

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

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

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

(C) The failure to pay the Regulatory License Fee when due; and

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

### **XV. REVOCATION OR SUSPENSION OF THE LICENSE**

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

(1) Reasonable notice of the charge;

(2) Representation;

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

and

(4) A finding reasonably supported by the evidence.

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

**XVI. APPEAL**

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

**XVII. PENALTY**

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

Passed and adopted on motion of James Woodyard, and seconded by James Terry this 28<sup>th</sup> day of January, 2011.

Joe Ward  
Joe Ward, Mayor

ATTEST:

Ruth Ann Powell  
Ruth Ann Powell, Clerk

On motion of James Terry, and seconded by William Makax

Second reading held on the 11<sup>th</sup> day of February 2011, and passed on the 11th day of February 2011.