

ORDINANCE 2016-02

AN ORDINANCE RELATED TO THE MANUFACTURING AND TRAFFICKING IN ALCOHOLIC BEVERAGES WITHIN THE CITY OF WILLIAMSTOWN, AND PROVIDING FOR THE REGULATION OF SUCH ACTIVITIES, THE LICENSING OF PERSONS OR ENTITIES ENGAGING IN SUCH MANUFACTURING OR TRAFFICKING, THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE, AND THE REPEAL OF ORDINANCES 2004-27, 2004-28, 2013-24, AND 2014-12.

WHEREAS, the City of Williamstown has adopted Ordinances 2004-27, 2004-28, 2013-24, and 2014-12 pertaining to the traffic in alcoholic beverages pursuant to the authority of KRS 242.1244(2) ("Limited Restaurant") and a local option election which became effective by City of Williamstown Ordinance on December 6, 2004;

WHEREAS, on December 22, 2015, a local option election was held pursuant to KRS 242.050, as a result of which election, effective February 22, 2016, expanded activities in the manufacture and traffic in alcoholic beverages will be permitted under the provisions of KRS Chapters 241-244;

WHEREAS, expanded sales and activities as approved in the recent local option election can create increased risks to the health, safety and welfare of the general public and to children and minors, in particular, unless appropriate regulation is adopted and enforced;

WHEREAS, the City Council deems it prudent and appropriate to provide by ordinance for the licensing and regulation of all manufacturing and trafficking in alcoholic beverages, including the expanded activities authorized by the December 22, 2015, local option election, to provide additional protections by regulation for the benefit of the health, safety and welfare of the general public and of children and minors, in particular, and to provide for enforcement of the Ordinance as hereinafter set out;

WHEREAS, the City Council, in the enactment of this Ordinance intends that the enacted ordinance allowing expanded sales protect and benefit the community by:

Promoting economic health within the community;

Causing the revenue stream created by expanded sales and activities to have the maximum impact on the economic health of the City of Williamstown and its business owners and citizens;

Providing expanded entertainment and cultural venues for local citizens and creating increased tourism traffic and activities;

Envisioning additions to our existing historic downtown district by the addition of small wine shops, food sales, bakeries, restaurants and cafes;

Protecting our citizens and the character of our neighborhoods, as well as the entire community, from the extremes that may be associated with alcoholic beverage enterprises;

Recognizing that dollars spent with local businesses have an expanded multiplying effect on the revenue stream of the community; and,

Realizing that any and all types of alcohol sales venues may not, without proper regulation, be in the best interests of our citizens, their homes or businesses and that alcoholic sales venues must be regulated;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLIAMSTOWN:

ARTICLE I. GENERAL

Sec. 1.1. Title: This Ordinance shall be known as the "Alcoholic Beverage Control Ordinance" of the City of Williamstown, Kentucky ["City"].

Sec. 1.2. Purpose: The purpose of this chapter is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage manufacture and sales pursuant to authorization of KRS Chapters 241 through 244.

Sec. 1.3. Definitions: The definitions of the words used throughout this Ordinance, unless the context requires otherwise, shall have the same meaning as those set out in the Kentucky Alcoholic Beverage Control law (KRS Chapters 241, 242, 243 and 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.

Sec. 1.4. Scope: This Ordinance shall be construed to apply to the manufacture and traffic in both malt beverages and distilled spirits and wine where the context permits such application. Nothing in this Ordinance shall excuse or relieve the licensee, or the owner, proprietor, employee, agent or person in charge of any licensed premises where alcoholic beverages are sold from the restrictions, requirements and penalties of any other ordinance or ordinances of the City or of any statutes of the state relating to violations pertaining to alcoholic beverages.

Sec. 1.5. The provisions of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky (KRS Chapters 241, 242, 243 and 244) and all amendments and supplements thereto, are adopted so far as applicable to this Ordinance except as otherwise lawfully provided herein.

ARTICLE II. LICENSES; LICENSE FEES; REGULATORY LICENSE FEE; EXPIRATION OF LICENSE

Sec. 2.1. 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 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 KRS 243.070. The fee for each city license shall be as set out in the following schedule. In the event KRS 243.070 shall hereafter be amended to authorize additional city licenses, the fee for each city license shall be the maximum fee provided in the statute as amended.

Sec. 2.1.1. Distilled spirit license as set forth in KRS 243.030:

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| 1. | Distilled spirit license as set forth in KRS 243.030: | |
| | a. Distiller's license, per annum | \$ 500.00 |
| | b. Rectifier's license, per annum | \$3,000.00 |
| | c. Wholesaler's distilled spirits & wine license, per annum | \$3,000.00 |
| | d. Quota Retail package license, per annum | \$ 800.00 |
| 2. | Special temporary license, per event | |
| | a. Wine license | \$ 25.00 |
| | b. Malt beverage license | \$ 25.00 |
| 3. | Non-quota type 1 retail drink license (includes distilled spirits, wine, and malt beverages), per annum | \$2,000.00 |
| 4. | Non-quota type 2 retail drink license (includes distilled spirits, wine, and malt beverages), per annum | \$1,000.00 |
| 5. | Non-quota type 3 retail drink license (includes distilled spirits, wine, and malt beverages), per annum | \$ 300.00 |
| 6. | Distilled spirits and wine special temporary auction, license, per event | \$ 200.00 |
| 7. | Special Sunday retail drink license, per annum | \$ 300.00 |
| 8. | Extended hours supplemental license, per annum | \$2,000.00 |
| 9. | Caterer's license, per annum | \$ 800.00 |

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| 10. | Bottling house or bottling house storage license, per annum | \$1,000.00 |
| 11. | Malt beverage license as follows: | |
| | a. Brewer's license, per annum | \$ 500.00 |
| | b. Microbrewery license, per annum | \$ 500.00 |
| | c. Malt beverage distributor's license, per annum | \$ 400.00 |
| | d. Non-quota retail malt beverage package license, per annum | \$ 200.00 |
| | e. Non-quota type 4 retail malt beverage drink license, per annum | \$ 200.00 |
| | f. Malt beverage brew-on-premises, per annum | \$ 100.00 |
| 12. | Limited restaurant license (includes distilled spirits, wine, and malt beverages), per annum | \$ 800.00 |
| 13. | Limited golf course license (includes distilled spirits, wine, and malt beverages), per annum | \$ 800.00 |
| 14. | The fee for each of the first five (5) supplemental bar licenses shall be the same as the fee for the primary drink license. There shall be no charge for each supplemental license issued in excess of five (5) to the same licensee at the same premises. | |
| 15. | The holder of a non-quota retail malt beverage package license may obtain a Non-quota type 4 malt beverage drink license for a fee of fifty dollars (\$50). The holder of a Non-quota type 4 malt beverage drink license may obtain a non-quota retail malt beverage license for a fee of fifty dollars (\$50). | |

Sec. 2.1. *LICENSE REQUIRED FOR SUNDAY SALES.* No licensee shall offer distilled spirits or wine drink sales on Sunday unless the licensee shall have obtained a special license for Sunday sales.

All restrictions and prohibitions applying to retail drink, distilled spirits, wine and malt beverage licenses shall apply to the special licenses, unless otherwise provided by law.

Sec. 2.2. *EXPIRATION OF LICENSE; PRORATION OF FEES.* All city licenses, except temporary licenses, shall begin on July 1 of any year and shall expire on June 30 of the following year. Any licenses issued after December 31 of any year shall be assessed a fee which is based on the pro rata portion of the remainder of the license period; however, the cost of any license shall not be less than one-half (1/2) the amount of the full fee for an annual license of that type.

Sec. 2.3. *PAYMENT OF LICENSE FEES; DELINQUENCY.* No licensee shall enter into or begin operating any business for which a license is required by this Ordinance until the license fee has been paid in full. The fee for renewal of any license shall be paid with the renewal application. Failure to pay any license fee within ten (10) days after it becomes due shall result in a penalty equal to ten percent (10%) of the license fee. Any licensee failing to pay the fees, including penalties, within ten (10) days after such fees are due may be subject to revocation of the license and to other penalties as provided in Article XI of this Ordinance.

Sec. 2.4. *REFUND OF FEES.*

Sec. 2.4.1. Should any licensee under this chapter be prohibited from conducting the licensed business for the full period covered by the license because of any changes that may hereafter be made in the laws of the commonwealth with reference to alcoholic beverages or other cause outside licensee's control, then the city shall refund to licensee the proportionate part of the license fee for the period during which licensee is prevented from carrying on said business if the licensee provides sufficient proof to the Administrator that such period of inactivity was not the fault of the licensee or the result of a revocation, suspension or other wrongdoing by licensee, or an agent or employee of the licensee.

Sec. 2.4.2. In the event a violation of this chapter occurs that results in the suspension or revocation of the license, the City shall not be required to refund any portion of the license fee.

Sec. 2.5. *REGULATORY LICENSE FEE.*

Sec. 2.5.1. Pursuant to KRS 243.075 and KRS 242.185(5), there is hereby imposed a regulatory license fee on the gross receipts of sale of alcoholic beverages of each license issued by the Administrator. The regulatory license fee shall be five percent (5%) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the regulatory license fee shall be five percent (5%) of gross sales. The regulatory license fee shall be five percent (5%) on gross retail sales of package malt beverages. Thereafter, the City Council shall adopt at the budget adoption for each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the City. Should the City fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed until such time as the City Council shall adjust the fee.

Sec. 2.5.2. Payment of such regulatory fee shall be remitted to the Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the City for the

estimated cost of any additional policing, regulatory or administrative expense related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, except that a credit against a regulatory license fee in the City shall be allowed in an amount equal to any license fee imposed by the City pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the license fee return approved for such use by the City Council. The return and payment are due no later than by the last business day immediately following each calendar quarter.

Sec. 2.5.3. Failure to pay such quarterly remittance by the due date constitutes a violation and will subject licensee to suspension or revocation.

Sec. 2.5.4. Penalty for failure to file a return and pay quarterly remittance by the due date is five percent (5%) of the tax for each thirty (30) days or fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the fee; provided, however, that in no case shall the penalty be less than ten dollars (\$10.00).

Sec. 2.5.5. Interest at the rate of eight percent (8%) per annum will apply to any late payments.

ARTICLE III. OFFICE OF THE CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

Sec. 3.1. Pursuant to KRS 241.160, there is hereby created the office of City Alcoholic Beverage Administrator ["Administrator"].

Sec. 3.1.1. The Mayor shall serve as the Administrator, the Mayor may appoint someone else to fill the position pursuant to KRS 241.170.

Sec. 3.1.2. The Administrator may from time to time appoint such additional personnel as is necessary to assist him or her in the administration of this ordinance.

Sec. 3.1.3. The salary for the office of Administrator, if any, together with the salaries of any other personnel assisting the Administrator, shall be fixed from time to time by the City Council.

Sec. 3.1.4. The functions of the Administrator shall be the same with respect to the City licenses and regulations as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky ["ABC Board"] with respect to state licenses and regulations, except that no amendment to these regulations proposed by the Administrator may be less stringent than the statutes relating to Alcoholic Beverage Control, or than regulations of the ABC Board. No regulation of the Administrator shall become effective until the City Council has first appropriately approved it.

Sec. 3.1.5. No person shall be an Administrator, an Investigator or an employee of the City under the supervision of the Administrator, who would be disqualified to be a member of the ABC Board under KRS 241.100.

Sec. 3.1.6. The Administrator shall have all authority as authorized under Chapters 241 through 244 of the Kentucky Revised Statutes. The Administrator, and the ABC Administrator's investigators, may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant.

Sec. 3.1.7. Should the Administrator at any time have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any stockholder, agent or employee of a licensed corporation, LLC or other business organization, has a criminal record, he shall have the authority to require such person to appear in person at the Williamstown Police Department for the purpose of having his or her fingerprints taken.

Sec. 3.1.8. The Administrator before entering upon his or her duties as such, shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00). The Administrator may require any employee under the Administrator's supervision to execute a similar bond in such penal sum as the Administrator deems necessary.

Sec. 3.2. *APPEALS.*

Sec. 3.2.1. Appeals from the orders of the Administrator may be taken to the state ABC Board by filing with the Board within thirty (30) days a certified copy of the orders of the Administrator. The Board shall hear matters at issue as upon an original proceeding. Appeals from orders of the Administrator shall be governed by KRS Chapter 13B.

Sec. 3.2.2. When any decision of the Administrator shall have been appealed, or when a protest has been lodged against an application for any license within the City, and the ABC Board shall have made a decision regarding such appeal or protested application, the Administrator, upon receipt of notice of finality of the decision, shall enter such orders and take such action as required by the final order of the ABC Board. As provided by law, and as used herein, no order of the ABC Board is final until all appeals or appeal times shall have been exhausted. A "final order" of the ABC Board is the order entered by said Board, unless an appeal is taken from the Board's order, in which case the "final order" is the order entered by the Board upon direction from the reviewing court of last resort in the final order of said reviewing court.

ARTICLE IV. APPLICATION FOR LICENSE; MAINTENANCE OF LICENSE

Sec. 4.1. ADVERTISEMENT.

Sec. 4.1.1. Before an application for a license shall be considered, the applicant must publish a notice of its intent to apply for an alcoholic beverage license in a newspaper meeting the requirements of KRS Chapter 424.

Sec. 4.1.2. The advertisement shall state the name and address of the applicant. It shall state the members of the partnership if the applicant is a partnership, and membership of the LLC if the applicant is an LLC, as well as the name of the business and its address. If the applicant is a corporation, the advertisement shall state the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself. All advertisements shall state the location of the premises for which the license is sought, and the type of license for which application is made.

Sec. 4.1.3. The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.

Sec. 4.2. APPLICATION.

Sec. 4.2.1. A nonrefundable application fee of \$50.00 shall be paid with the filing of the application for a city license. If the license is granted, the application fee shall be credited against the initial license fee.

Sec. 4.2.2. All licenses granted under this ordinance shall be approved by the Administrator. Applications for the issuance of new licenses and for renewals of existing licenses shall be in writing and upon the forms provided by the ABC Board and the City, as amended and supplemented from time to time.

Sec. 4.2.3. The application shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought as required by the Kentucky Revised Statutes, the ABC Board and the City, including as follows:

- (1) Name and address;
- (2) Nature of interest;
- (3) Whether or not a citizen of the United States;
- (4) Date of birth;

- (5) Date residence was established in Kentucky, if a resident of Kentucky. If Williamstown resident indicate when residence was established;
- (6) Whether or not he or she has any interest in any other license or LLC, corporation, partnership or other business organization holding a license under this ordinance;
- (7) Extent of stock or company ownership;
- (8) Whether or not he or she has any interest in any license or LLC, corporation, partnership or other business organization holding a license in any other state or province.

Sec. 4.2.4. Each application shall be accompanied by a certified check, cash or a postal or express money order for the amount of the license fee, less the \$50.00 application fee. License fees may be paid by credit/ debit card if the application is delivered in person.

Sec. 4.2.5. In addition to the above specified information, the applicant shall file with the application responses to any additional questions as may be posed or prescribed by the Administrator. The City Council has adopted a statement of guidelines and priorities for the issuance of licenses and, in order to determine the extent to which applications may further or impede the objectives of those guidelines, the Council may, by municipal order, adopt a questionnaire to be submitted to applicants for licenses. Upon adoption of the questionnaire, it shall become a part of the application process. The initial questionnaire adopted by the City Council is a part of this ordinance and incorporated herein as Exhibit A. The questionnaire may be altered, expanded, supplemented or replaced by municipal order of the Council hereafter. In addition to the information contained in the application and any City ordered questionnaire, the Administrator may require such other information as the Administrator may in his/her discretion deem desirable, reasonable or appropriate to the consideration of the application.

Sec. 4.3. *OTHER CONDITIONS.* In addition to any other inquiries, conditions or considerations required or permitted by law.

(1) The Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until the applicant and his place of business shall have been approved by the City Building Inspector, and any and all other inspections required by the Kentucky Building Code, the local Zoning Administrator or fire department;

(2) All applicants shall voluntarily submit to a criminal background check and shall sign a waiver allowing the release of this information to the Administrator; and

(3) No license to sell alcoholic or malt beverages shall be granted or renewed to any person who is delinquent in the payment of any taxes or fees due the City at the time of issuing

the license, nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any delinquent taxes or fees due the City. Further, if a licensee becomes delinquent in the payment of any taxes or any fees due the City at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension.

(4) No person, whether an applicant for license, or a licensee, shall in any manner attempt to bribe, threaten, unduly influence or intimidate the Administrator, or any member of his or her staff, or any state ABC administrator or staff, in any matter in which an application or proposed application for license, or procedure for revocation or suspension is pending before such officer. This paragraph is not intended to stifle expressions of opinion; however, it is intended to make clear that the ABC Administrators are public officials charged with the administration and enforcement of the law, both local and state. Any person applying for a license, or contesting the revocation or suspension of a license, who engages in attempted bribes, threats, attempted undue influence or intimidation of a City or state ABC Administrator or staff shall be disqualified from receiving or retaining a license, in addition to other penalties as provided by law. The procedures for appeals shall apply to disqualifications, revocations or suspensions under this section. This section shall not be interpreted to prohibit monetary settlements in lieu of revocation or suspension of license after a final order or revocation or suspension, where the ordinance and applicable statutes allow for such payments in settlement.

Sec. 4.4. *FORM OF LICENSE.* All City licenses shall be in such form as may be prescribed by the City Council and shall contain:

- (1) The name and address of the licensee;
- (2) The number of the license;
- (3) The type of license;
- (4) A description by street and number, or otherwise, of the licensed premises;
- (5) The name and address of the owner of the building in which the licensed premises are located;
- (6) The expiration date of the license;
- (7) A statement in substance that the license shall not be a property or vested right and that it may be revoked at any time pursuant to law.

Sec. 4.5. *CHANGE OF INFORMATION*

Sec. 4.5.1. If after a license to individuals or to a sole proprietor has been issued, there is a change in any fact required to be set forth in the application, a verified amendment in writing giving notice of the change shall be filed with the Administrator within ten (10) days of the change.

Sec. 4.5.2. Since a number of licenses issued by the City are in the name of corporations or other business organizations, it is necessary that ownership changes in such organizations be reported to the Administrator. The Administrator can, therefore, investigate the person to whom the ownership or management is transferred in order to ascertain whether that person is precluded by statute from holding an interest in an alcoholic beverage license.

(1) As used with regard to a partnership, corporation, LLC or other business organization herein, the word "change" is construed to include any change in managers, partners or LLC members, directors or officers of the corporation, or change in ownership or stock whereby any person secures ten percent (10%) of the outstanding ownership or stock. Transfer of more than ten percent (10%) of the total ownership or stock shall require a new license.

(2) The following information will be required concerning any new manager, partner or LLC member, new director, officer, or person securing any interest in alcoholic beverage license:

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

(3) This information shall be filed with the Administrator as a verified amendment of the application pursuant to which the license was granted. Filing shall be made within ten (10) days of any change of required information.

Sec. 4.6. *RENEWAL OF LICENSE*

Sec. 4.6.1 Every year, except in the case of temporary licenses, each licensee shall renew its license. All renewal licenses must be on file with the Administrator no less than thirty (30) days prior to the expiration of the license for the preceding license period or the same shall be canceled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license period as a result of construction, act of God, casualty, death, the acquisition or threatened acquisition of the premises by any federal, state, city or other governmental agency or private organization possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; provided that said licensee shall file a written verified statement no less than twenty (20) days from the expiration date of the license, setting forth these facts, and the Administrator is hereby authorized to extend the time for filing of a renewal of such license for a reasonable length of time within the sound discretion of the Administrator; provided, however, such licensee shall pay a license fee from the expiration date of the former license or licenses. Said license fee shall not be payable until application is made for the transfer of said license to a new location.

Sec. 4.6.2. The renewal by the Administrator of the license shall not be construed to be a waiver or acceptance of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee.

Sec. 4.7. *LOST OR DESTROYED LICENSE.* When a license shall be lost or destroyed without fault on the part of the licensee or his agent or employee, a duplicate in lieu of the original license shall be issued by the Administrator after the Administrator shall have been satisfied as to the facts; provided, however, that the applicant for said duplicate license shall pay a fee of ten dollars (\$10.00) for the duplicate license.

Sec. 4.8. *REVOCATION OR SUSPENSION.* Any license may be revoked or suspended by the Administrator if the licensee shall have violated any of the provisions of KRS Chapters 241, 242, 243 or 244, or any rule or regulation of the ABC Board or of the Department of Revenue relating to the regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or if such licensee shall have violated or shall violate any act of Congress or any rule or regulation of any federal board, agency or commission, or this ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or

taxation of intoxicating liquors or any rules or regulations of the City heretofore in existence or authorized by the terms of KRS Chapters 241, 242, 243 and 244 to be created, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any such license may be revoked or suspended for any cause which the Administrator in the exercise of his sound discretion deems sufficient.

Sec. 4.8.1. A license may be revoked for any of the reasons for which the Administrator would have been required to refuse a license if the facts had been known.

Sec. 4.8.2. In addition to the foregoing stated causes, any license may be revoked or suspended for the following causes:

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

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

(3) If within a period of two (2) consecutive years, any licensee or any clerk, servant, agent or employee of the licensee shall have been convicted of two (2) violations of the terms and provisions of KRS Chapter 241, 242, 243 or 244 or any act heretofore or hereafter in effect relating to the regulation of the manufacture, sale and transportation of alcoholic beverages or if within such period, any licensee or any clerk, servant, agent or employee of the license shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one (1) such felony and one (1) such misdemeanor.

(4) Willful and deliberate failure or default of a licensee to pay an excise tax or any part thereof, or any penalties imposed by or under the provisions of any statutes, this chapter or acts of Congress relative to taxation, or for a violation of any rules or regulations of the Department of Revenue made in pursuance thereof.

(5) Setting up, conducting, operating or keeping, on the licensed premises, any gambling game, device, machine or contrivance, or lottery or gift enterprise, or handbook or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such game, device, machine, contrivance, lottery, gift enterprise, handbook or facility.

Sec. 4.9. *PROCEEDINGS FOR REVOCATION OR SUSPENSION OF LICENSE; NOTICE AND OPPORTUNITY TO CONTEST; APPEAL; EFFECT OF REVOCATION OR SUSPENSION*

Sec. 4.9.1. Upon the verified complaint of any person, or on the initiative of any law enforcement officer or of the Administrator, the Administrator may institute proceedings to revoke or suspend any license granted under this ordinance. A license may be revoked or suspended only after the licensee shall have been given written notice, by certified or registered mail, of the proposed revocation, including notice of the reasons for such proposed action. The licensee shall be given opportunity to be heard in opposition to the proposed revocation or suspension. The notice of proposed action shall advise the licensee of the date, time and place of the hearing. Notice shall be sufficient if mailed to the licensee at the address shown in the last application for a license or in the last statement supplemental to or in amendment of the application, whether or not the mailing is receipted for or claimed.

Sec. 4.9.2. The specific procedures to be followed in hearings on actions for revocation or suspension shall be prescribed by the City Council by municipal order. Such order shall be maintained on file in the office of the Administrator and a copy furnished with any notice of proposed revocation or suspension sent to a licensee. If the Council shall fail to adopt such municipal order, the procedures shall be those set out in the Kentucky Administrative Procedure Act (KRS Chapter 13B).

Sec. 4.9.3. A decision of the Administrator revoking or suspending a license may be appealed as provided in KRS 243.550.

Sec. 4.9.4. Within three (3) days after any order of revocation or suspension of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section. The licensee shall at once surrender his license to the Administrator. If the revoked or suspended license is not forthwith surrendered by the licensee, the Chief of Police at the request of the Administrator shall immediately cause one of his officers to take physical possession of the license and return it to the Administrator.

Sec. 4.9.5. When a license has been revoked or suspended, the former licensee may, with prior approval of the Administrator, dispose of and transfer his stock of alcoholic beverages to an appropriate entity.

Sec. 4.9.6. Appeal from the decision of the Administrator revoking or suspending a license shall be to the ABC Board. The timely filing of an appeal shall stay further proceedings for revocation.

Sec. 4.9.7. If a license is revoked or suspended by an order of the Administrator, and the decision is not appealed, the licensee shall at once suspend all operations authorized under his license. Upon the entry of a final order of the ABC Board sustaining or ordering revocation or suspension on appeal, the licensee shall at once suspend all operations authorized under this license.

Sec. 4.10. *TRANSFER OR ASSIGNMENT.* No license issued under this ordinance shall be transferred or assigned either as to licensee or location except with prior approval of the Administrator and not then until a payment of One Hundred Dollars (\$100.00) shall be made to the Administrator.

Sec. 4.11 *REFUSAL OF LICENSE; GUIDELINES FOR APPROVAL OF QUOTA LICENSES.*

Sec. 4.11.1. The Administrator may refuse to issue or renew a license for any of the following reasons:

(1) Causes for refusal to issue or renew a license and for suspension or revocation of a city license shall be the same as provided for state licenses according to KRS 243.450, 243.490 and 243.500, as well as violation of any city ordinance regarding alcohol beverage licensing, sales or the administration thereof.

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

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

Sec. 4.12.1. An applicant who has been refused a license by the Administrator may appeal the refusal to the ABC Board pursuant to KR 241.200.

Sec. 4.13. *REVIEW OF LICENSE; BOOKS, RECORDS AND REPORTS*

Sec. 4.13.1. Applicants to whom a license is issued pursuant to this ordinance shall provide periodic information demonstrating compliance with the conditions of any license, such as, but not limited to, the continuing requirement that a minimum percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly regulatory fee filings. The City shall

provide the form schedule to the licensee. The licensee's acceptance of a license to manufacture or traffic in alcoholic beverages shall constitute consent to the filing of the quarterly report. In the case of caterer filing, the quarterly report shall identify each catered event by type of event, date and address of the event, and shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales during the reporting period. This requirement for filing of reports notwithstanding, the City may at any time come upon the premises of any licensee and examine the books and records to determine whether the licensee is in compliance with all parts of this ordinance. In the event the conditions of any license requirement are not met during any particular quarter, the Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the Administrator may apply an accounting period of at least one (1) year in determining whether or not the food sale percentage requirement has been met.

Sec. 4.13.2.

(1) Every licensee under this chapter shall keep and maintain upon the licensed premises adequate books and records of all transactions involved in the sale of alcoholic beverages in the same manner required by the rules and regulations of the ABC Board. Such books and records shall be available at all reasonable times for inspection by the Administrator and such city employees who may assist the Administrator in his or her review.

(2) For the purpose of assisting the Administrator in enforcement of this chapter, every licensee required to report to the ABC Board under KRS 243.850 shall provide a copy of such report to the Administrator. Copies of any and all reports and correspondences to the ABC Board required by statute shall be furnished to the Administrator.

Sec. 4.14. *DORMANCY*

(1) It is necessary that a licensee actually conduct the business authorized by such a license or else the license will be declared dormant and become null and void after ninety (90) days. Such is the intent of this section. Realizing that a licensee, like other business, may have his business interrupted by situations not under his control, various exceptions to the dormancy rule have been included in this section.

(2) Any license under which no business is transacted during a period of ninety (90) days shall be deemed inactive and, unless the conditions set forth in paragraph (3) below are proved to the satisfaction of the Administrator, the license shall be surrendered to the Administrator. If the license is not voluntarily surrendered, it shall be revoked by the Administrator.

(3) The provisions of paragraph (2) hereof shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain, whether acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. Prior to the expiration of ninety (90) days of inactivity, such licensee shall furnish to the Administrator a verified statement setting forth the fact that the licensee is unable to continue in business, for any of the specific reasons set forth herein, and the Administrator may grant an extension of the dormancy with the license continuing to remain in effect during the license period or until same is transferred to another premises, notwithstanding the fact that no business is transacted during said period; provided, however, no such license shall be considered valid unless business is conducted there under within twelve (12) months from the date of notice to the Administrator. Such extension may not extend beyond the renewal date but may be for such times as the Administrator deems appropriate in exercise of his sound discretion.

ARTICLE V. HOURS FOR SALE AND DELIVERY

Sec. 5.1. A licensee for distilled spirits, wine or malt beverages by the drink shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 6:00 a.m. until midnight each day of the week, except that such drink sales shall be permitted on Sunday only between the hours of 1:00 p.m. and midnight.

Sec. 5.2. Retail package distilled spirits and wine sales and package malt beverage sales shall be permitted from 6:00 a.m. until midnight each day of the week, except that such package sales shall be permitted on Sunday only between the hours of 1:00 p.m. and midnight.

Sec. 5.3. A licensee licensed to sell distilled spirits, wine or malt beverages by the drink may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m. on January 1, provided that the appropriate licenses have been obtained from both the city and the state ABC Board.

Sec. 5.4. A licensee for distilled spirits, wine or malt beverages by the drink shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages during the hours that the polls are open on any election day.

ARTICLE VI. CONDITIONS, PROHIBITIONS AND RESTRICTIONS

Sec. 6.1. No gambling or game of chance unless otherwise authorized by the Commonwealth of Kentucky 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.

Sec. 6.2. 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 any law enforcement agency in Grant County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or the Administrator, or his designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

Sec. 6.3. The licensee shall be responsible for maintaining security on his premises including providing adequate outside lighting to permit customers to utilize the parking area and to promote the safety, health and welfare of the general public utilizing the licensed premise. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

Sec. 6.4. It shall be unlawful for the licensee under this ordinance who sells alcoholic beverages of any kind to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in direct connection with the sale of alcoholic beverages nor shall any licensee give away any alcoholic beverage in any quantity for less than a full monetary consideration.

Sec. 6.5. 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 sell alcoholic beverages to any person who is actually or apparently under the influence of alcoholic beverages, or known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period. No licensee shall permit any person who is actually or apparently under the influence of alcoholic beverages to remain on the licensed premises. As used herein, whether a person is actually or apparently under the influence of alcoholic beverages shall be determined by the licensee or server with specific reference to the principles and guidelines established in mandatory alcohol server training as to the signs of alcohol intoxication.

Sec. 6.6. The licensee shall not sell or dispense alcoholic beverages to any person who is under 21 years of age. The licensee shall check all identification to ascertain that every person attempting to purchase or consume alcoholic beverages is at least 21 years of age.

Sec. 6.7. The licensee shall display at all times in a prominent place a sign at least 8" x 11" in 30 point or larger type which states as follows:

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

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

Sec. 6.8. The licensee, before commencing any business for which a license has been issued, shall post and display at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

Sec. 6.9. The licensee shall post in a prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the Alcoholic Beverage Control Commission, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects. A person who violates this subsection shall be subject to a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). KRS 243.895.

Sec. 6.10. No wholesaler or distributor shall sell any alcoholic beverages to any person in the City for any consideration except under the usual credit or cash terms of the wholesaler or distributor at or before the time of delivery. Nor shall any retail licensee sell to a purchaser for any consideration except for cash at time of purchase.

Sec. 6.11. No licensee shall knowingly employ in connection with his or her business any person who:

- (1) Has been convicted of any felony within the last two (2) years;

(2) Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;

(3) Is under the age of twenty (20) years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined under state statute;

(4) Within two (2) years prior to the date of his or her employment, has had any City license under this Ordinance revoked for cause.

Sec. 6.12. Licensees shall not offer reduced drink specials (e.g. two-for-one, happy hours) after the hour of 11:00 p.m. until closing.

Sec. 6.13. All retail beer and retail drink licenses shall be required to provide indoor or outdoor lavatory facilities for their customers where such beverages are consumed on the premises.

Sec. 6.14 No licensee shall offer or permit nudity, adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premise.

Violation of this Article shall subject the licensee to penalties provided in this chapter and shall be cause for revocation of license.

ARTICLE VII. POSSESSION BY MINORS PROHIBITED; NO PERSON SHALL AID POSSESSION BY MINORS

Sec. 7.1. Except as specifically authorized under KRS 241 through 244, no person under the age of 21 may possess alcoholic beverages or enter onto any licensed premises for the purpose of acquiring alcoholic beverages.

Sec. 7.2. As provided in KRS 244.085, no person under the age of 21, except in the company of a parent or guardian, may enter any premises licensed for the package sale of alcoholic beverages. For purposes of this prohibition, "premises" specifically encompasses the entire lot upon which a licensed establishment is situated, including any drive-up window. The prohibition contained in this paragraph (2) shall not apply to premises where the usual and

customary business of the establishment is a gas station, convenience store, grocery store, drugstore, or similar establishment.

Sec. 7.3. No person shall knowingly allow, aid, assist, induce, cause or otherwise encourage any minor to be in possession of, use or consume alcoholic beverages. All licensees, as set out in Section 6.6, shall require proof of age of all persons attempting to purchase or consume alcoholic beverages on the licensee's premises.

Sec. 7.4. No person being the owner or occupant or otherwise in possession or control of any property located within the City shall knowingly allow any minor to remain on such property while in possession of, using or consuming alcoholic beverages.

Sec. 7.5. It shall be a defense to any prosecution under this section if the person charged, upon discovery of said minor individuals, manifests a proper effort to enlist the aid of and cooperate with law enforcement personnel in stopping the minor individuals' possession, consumption or use of alcoholic beverages, or that the minor individuals' possession of alcoholic beverages was exempted by KRS 244.087.

ARTICLE VIII. CONSUMPTION ON LICENSED PACKAGE PREMISES PROHIBITED; EXCEPTIONS; CONGREGATING ON CERTAIN ABC LICENSED PREMISES AND VACANT PREMISES PROHIBITED

Sec. 8.1. No licensee of a package store, whether trafficking in distilled spirits, wine or malt beverages, shall permit consumption of alcoholic beverages on the premises unless said person or entity shall also have a drink license conferring the privilege of consumption on the premises or shall have a retail malt beverage license, which permits on premises consumption. Any licensee who intends to permit on premises consumption shall, prior to permitting on premises consumption, notify the Administrator in writing of this decision. A licensee who does not permit on premises consumption shall post a prominent notice on the premises stating that consumption of alcoholic beverages on premises is prohibited.

Sec. 8.1.1. This restriction regarding on premises consumption shall not prohibit sampling as allowed for microbreweries and wineries under the provisions of KRS Chapter 243, or where sampling is permitted for a retail distilled spirits and wine licensee under the provisions of KRS 244.050, or beer tastings as permitted in 804 KAR 11:030.

Sec. 8.2. No person or entity operating a package liquor store, whether trafficking in distilled spirits, wine or malt beverages, including retail package beer licensees, shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of the licensed premises so as to constitute a public nuisance.

Sec. 8.3. No person or entity being the owner or otherwise in possession or control of any vacant property shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of such property so as to constitute a public nuisance.

Sec. 8.3.1. No persons shall congregate for the purposes, under the circumstances, or in the places proscribed in subsections (1) and (2) of this section.

Sec. 8.3.2. It shall be a defense to any prosecution under subsection (1) or (2) if such licensed vendor or property owner shall permit the police department to post and maintain a legible, painted or printed sign in at least two (2) separate prominent places in such area, in letters of not less than three (3) inches in height, stating that congregating of persons is prohibited and that violators shall be prosecuted for trespass pursuant to KRS 511.080.

Sec. 8.3.3. As used in this section, the term:

- (a) *Habitual* shall mean consistent, that is, by frequent practice or use, but not necessarily constant or exclusive;
- (b) *Package liquor store* shall mean a retail establishment selling distilled spirits, wine and malt beverages in package containers pursuant to licenses issued for those purposes;
- (c) *Public nuisance* shall mean any activity that endangers or interferes with the general use and enjoyment of neighboring property, passers-by or the health, safety and welfare of the public; and,
- (d) *Vacant property* shall mean a vacant lot on which no building or other structure exists or property on which any structure is unoccupied or unused, or which otherwise reflects abandonment by the owner or person with the right of occupancy.

ARTICLE IX. ENFORCEMENT. City police officers and the Administrator are authorized to enforce this Ordinance for alleged violations.

ARTICLE X. PENALTIES

Sec. 10.1. In addition to any criminal prosecution instituted in Grant District Court against an alleged violator, the Administrator may assess the fines and penalties authorized in KRS 243.480, including the per diem assessments for ongoing violations. Should the fines or penalties assessed by the state change under KRS 243.480, then the fines or penalties under this Article shall be adjusted accordingly to mirror the fines or penalties imposed by state law. Payment of all fines shall be made to the Administrator.

Sec. 10.2. Any person, firm or corporation who violates any of the provisions of this Ordinance, for which no other penalty is hereby provided, shall, for the first offense, be fined not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00) or imprisoned in the county jail for not more than six (6) months, or both, and for the second and each subsequent violation, he shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or imprisoned in the county jail for not more than six months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, LLC, joint stock company, association or other business organization, or a fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

ARTICLE XI. MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

Sec. 11.1. All persons employed in the selling and serving of alcoholic beverages shall participate in and complete the STAR (Server Training in Alcohol Regulations) beverage service training program.

Sec. 11.2. All persons required to complete training under paragraph (1) above shall complete that training within thirty (30) days of the date on which the person first becomes subject to the training requirement. When a new business is licensed to serve alcoholic beverages all employees must be trained prior to the opening of the business.

Sec. 11.3. Each licensee shall be responsible for compliance with the training requirements and shall maintain for inspection by the Administrator a record or file on each employee that shall contain the pertinent training information. Each premise licensed hereunder must at all times when alcoholic beverages are being served have at least one person currently certified in responsible beverage service training on duty.

Sec. 11.4. All persons completing the training required by this section shall be re-certified in responsible beverage service training from a program approved by the City not less than once every three years thereafter.

ARTICLE XII. SIGNS AND ADVERTISING: ADVERTISING ON MUNICIPALLY OWNED PROPERTY PROHIBITED; CERTAIN OTHER ADVERTISING PROHIBITED

Sec. 12.1. All signage shall be in compliance with any and all other existing rules and regulations of the City.

Sec. 12.2. Any off premises signage advertising the sale of alcoholic beverages is prohibited. It shall be unlawful to attach signage advertising alcoholic beverages to the exterior of the building or the exterior premises of the business. This prohibition shall include the use of outdoor umbrellas or other outdoor or patio fixtures that feature the name or logo of an alcoholic beverage or manufacturer of alcoholic beverages.

Sec. 12.3. Signage which refers directly or indirectly to alcoholic beverages will be limited to one (1) sign not over two (2) square feet that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of displaying advertising which refers either directly or indirectly to alcoholic beverages shall be displayed on, nor shall it be visible from the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business cards not larger than two and one-half inches (2-1/2") in size, setting forth the price at which the licensee offers alcoholic beverages for sale.

Sec. 12.4. No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.

Sec. 12.5. It shall be unlawful for a licensee under this chapter to distribute or cause to be distributed any handbills, circulars, or cards as a medium of advertising alcoholic beverages.

Sec. 12.6. Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

Sec. 12.7. No licensee shall advertise alcoholic beverages on any municipally owned property.

Sec. 12.8. No licensee shall publish or display advertising that is false or misleading, nor shall any licensee publish or display advertising that implies that consumption of alcoholic beverages is fashionable or the accepted course of behavior, or advertising that contains any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, whether or not any known athlete is depicted or referred to, nor shall any licensee publish or display advertising that encourages intoxication by referring to the intoxicating effects of alcohol (or the use of terms such as "high test", "high proof" or "extra strong") or depicting activities that tend to encourage excessive consumption.

ARTICLE XIII. PATIO AND OUTDOOR SALES; WHERE PERMITTED; APPROVAL REQUIRED; SCREENING REQUIREMENTS; EXCEPTIONS

Sec. 13.1. Patio and outdoor sales of alcoholic beverages shall be permitted only on premises licensed for sales of alcoholic beverages by the drink.

Sec. 13.2. No licensee shall offer alcoholic beverages for sale in a patio or outdoor area of the licensee's premises except in a clearly defined patio or outdoor area that is enclosed by a fence or other screening, not less than three (3) feet in height. All outdoor areas and screening shall be subject to the approval of the Administrator. An exception to this restriction may be granted for seasonal sidewalk cafes, upon application to and authorization from the Administrator. The permission to operate a sidewalk café shall be governed by the provisions of this Article and shall be subject to the regulation of local zoning authorities as well as codes enforcement and public safety officers.

Sec. 13.3. No licensee shall offer patio or outdoor sales of alcoholic beverages unless the patio or outdoor area and fencing or screening area shall have been approved in advance by the Administrator.

Sec. 13.4. Unless exempted by the following provisions of this ordinance and by permission of the Administrator, patio areas must comply with the screening requirements of this ordinance. Sidewalk café seating areas must comply with this ordinance and with local zoning ordinance and other public safety requirements noted in this ordinance or in other provisions of local ordinance, statute or regulation.

Sec. 13.4.1. *EXCEPTION TO SCREENING REQUIREMENT FOR OUTDOOR SALES AND SERVICE OF ALCOHOLIC BEVERAGES IN THE CASE OF PERMITTED SIDEWALK CAFES IN THE CENTRAL BUSINESS DISTRICT*

Licensees in the Central Business District may request an exception from this [outdoor screening of patio] provision to permit seasonal sidewalk cafes that serve food and alcoholic beverages as an adjunct to the primary and adjacent licensed premises. In the case of permitted sidewalk cafes, they shall be deemed part of the licensed premises.

Any food establishment which operates a restaurant and is licensed under this ordinance and the provisions of the state ABC code, may, upon application to the Administrator, ask permission to expand the operation of that restaurant onto a part, and only that part, of the public sidewalk which immediately adjoins the licensed premises (hereinafter referred to as "sidewalk café"). Licensees who do not serve food shall not be eligible to apply for a sidewalk café permit.

The Administrator may issue the permit if he/she finds that (a) the Applicant is licensed under this ordinance and the ABC Code for the Commonwealth of Kentucky, (b) the Applicant is in

compliance with all conditions and restrictions of said license, (c) the Applicant has all necessary building and use permits, including certification of the Zoning Administrator that the sidewalk café is permitted at the premises location, and (d) also finds that the issuance of the Permit would not result in any significant adverse land use impacts.

Sec. 13.4.2. *CONDITIONS FOR SIDEWALK CAFE PERMIT.* The issuance of a Permit shall be subject to the following conditions and restrictions; provided, however, that the Administrator may without adverse hearing procedures impose additional reasonable restrictions or withdraw approval upon the operation of any sidewalk café where necessary in the judgment of the said Administrator to protect the public health, safety or welfare or to prevent a nuisance from developing or continuing:

(1) No sidewalk café shall be permitted in any portion of the public sidewalk where normal pedestrian traffic flow is obstructed. A minimum clearance width of thirty-six (36) inches must be maintained on the public sidewalk at all times. The sidewalk café shall not be permitted in any manner to obstruct the entrance/exit to the restaurant.

(2) Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved Permit. While such café is in operation, all tables and chairs shall be kept in a clean, sanitary condition.

(3) The use of a portion of the public sidewalk as a sidewalk café shall not be an exclusive use. All public improvements, including but not limited to, trees, light poles, traffic signals, pull boxes or manholes, or any public-initiated maintenance procedures, shall take precedence over said use of the public sidewalk at all times.

(4) The licensee shall, in addition to all other requirements of law, take reasonable steps to insure that alcoholic beverages are consumed only by patrons of the establishment who are of age, and not by passersby or persons who are not of age or who are obviously or apparently intoxicated.

(5) The licensee shall not permit any alcoholic beverages to be taken off premises by patrons, customers or guests.

(6) No amplified sound shall be used within a sidewalk café. At no time shall any music originating from any part of the Premises create a nuisance;

(7) Dancing shall not be permitted or allowed in the sidewalk café;

(8) The licensee must at all times comply with all federal, state and local laws regarding the sale, service and consumption of alcohol and the operation of the Premises;

(9) The permit for sidewalk cafe may not be assigned or transferred.

Sec. 13.4.3. *OTHER REQUIREMENTS APPLICABLE TO SIDEWALK CAFES.* No sidewalk café permit shall be effective unless the licensee has filed with the Administrator evidence of insurance insuring the licensee against liability imposed by law arising out of the ownership, maintenance or operation of such sidewalk café in an amount to be established by the Administrator. The City shall be named an additional insured in the policy, providing such insurance and such policy shall further provide that it may not be canceled except upon ten (10) day's written notice (or more) filed with the Administrator.

ARTICLE XIV. IMPLEMENTATION OF ORDINANCE PROVISIONS. From time to time, the Williamstown City Council may by municipal order promulgate such rules and regulations and may publish and utilize such forms and other documents as in its discretion may be necessary for the proper implementation of this chapter.

ARTICLE XV. REPEAL OF PRIOR ORDINANCES PERTAINING TO ALCOHOLIC BEVERAGE CONTROL. On the effective date of this ordinance, it shall supersede and supplant prior ordinances pertaining to alcoholic beverage control. Ordinances 2004-27, 2004-28, 2013-24, and 2014-12 are hereby repealed in their entirety.

ARTICLE XVI. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase, or a portion of this ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

ARTICLE XVII. PUBLICATION. This ordinance shall be published in summary pursuant to KRS 83A.060(9) and shall be effective as soon as possible according to law.

Rick Skinner, Mayor
City of Williamstown, Kentucky

ATTEST:

Vivian Link, City Clerk/Treasurer

2016-02

1st Reading

2nd Reading

Publication

CITY OF WILLIAMSTOWN, KENTUCKY
ORDINANCE NO. 2004 -28

RECEIVED

2005 JAN 28 A 9:51

AN ORDINANCE OF THE CITY OF WILLIAMSTOWN, GRANT COUNTY,
KENTUCKY, RELATING TO MANDATORY RESPONSIBLE BEVERAGE
SERVER TRAINING.

ALCOHOLIC
BEVERAGE CONTROL

WHEREAS: Surveys of businesses selling alcohol have found that youth can easily purchase alcohol without showing any age identification. Alcohol sales to individuals who are or about to become intoxicated pose a significant risk of serious injury or death to the motoring public and financial liability to the business serving the alcohol. Alcohol servers and sellers who receive responsible beverage service training should be less likely to sell alcohol to persons under age or who have consumed too much alcohol by virtue of their training in the identification of false age documentation and recognition of characteristics of intoxication; and

WHEREAS: Responsible beverage service training would inform alcohol servers and sellers of the consequences of the illegal sale of alcohol to persons under age or who have consumed too much alcohol. This training would be more effective through the participation of owners or managers of businesses selling alcohol in courses on the development of effective policies, which reduce youth access to alcohol and support employees in refusing the sale or service of alcohol to persons under age or who have had too much alcohol.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF WILLIAMSTOWN, IN GRANT COUNTY, KENTUCKY, AS FOLLOWS:

SECTION I

Mandatory Responsible Beverage Service Training.

All persons employed in the selling and serving of alcoholic beverages shall participate in a City-approved responsible beverage service training program. For a responsible beverage service training program to be approved by the City, it must effectively train its participants in the identification of false age documentation and recognition of characteristics of intoxication. The City will not require enrollment in particular classes, but only that the training be obtained from a recognized program meeting the goals expressed in this Ordinance.

SECTION II

Licenses.

A. All persons employed by a person or entity licensed under City Ordinance 2004-27 for the sale of alcoholic beverages whose job duties include the sale or service of alcoholic beverages or the management of premises on which alcoholic beverages are served, shall complete responsible beverage service training from a program approved by the City.

B. All persons licensed under City Ordinance 2004-27 for the sale of alcoholic beverages shall complete responsible beverage service training from a program approved by the City.

C. All entities licensed under City Ordinance 2004-27 for the sale of alcoholic beverages shall designate a person who, on behalf of the entity, shall complete responsible beverage service training from a program approved by the City. The person designated must have the authority to implement or amend the licensee's on-premise practices for selling and serving alcohol.

D. All persons required to complete training under paragraphs A, B, and C, above, shall complete that training within forty-five days of the date on which the person first becomes subject to the training requirement. All persons completing the training required by this section shall be re-certified in responsible beverage service training from a program approved by the City not less than once every three years thereafter.

E. All persons or entities licensed under City Ordinance 2004-27 for the sale of alcoholic beverages shall require all their employees who are engaged in the selling or serving of alcoholic beverages or the managing of premises on which such sales are offered to complete a City-approved responsible beverage service training class according to the provisions of this Ordinance.

SECTION III

Required information and Signage to Assist the Trained Servers and Sellers.

A. **Driver's License Guide and Compilation of Laws.** The Licensee shall maintain the following information on the premises, in a location accessible at all times to all employees of the licensed establishment:

1. A current driver's license guide, which shall include license specifications for both adults and minors for each state (including Canadian provinces), and shall list such information from at least five (5) years prior to the present date; and
2. A current compilation of the laws relating to the sale and possession of alcoholic beverages in Kentucky. This compilation must also include City Ordinance 2004-27.

B. **Signage.** The licensee shall maintain on the premises, in all customer areas, current signage related to underage consumption of alcoholic beverages and to driving under the influence of alcohol. One (1) sign must be located behind the counter/bar and one (1) sign must be present in each additional room or section within the restaurant area in which the writing on the sign behind the counter/bar is not clearly legible. The sign(s) must have dimensions of at least one (1) foot by one (1) foot with letters at least one-half (1/2) inch in height. All signs must be comfortably readable from a distance of fifteen (15) feet. Any signs required by this Ordinance for which there are comparable ABC requirements shall be maintained in conformity with KY ABC regulations.

C. **Personnel Certification Records.** Each licensee shall maintain a file on its business premises for each person connected with its business for whom training is required under this Ordinance. That file shall contain the name, job description, date of employment and proof of certification pursuant to this Ordinance of each employee, officer and agent subject to the training requirement provided in this Ordinance. During business hours, this file shall be available to the person or persons designated by the Mayor's Office with responsibility for enforcement of this Ordinance and City Ordinance 2004-27 related to the licensing of premises for the sale of alcoholic beverages.

SECTION IV.
Seller/Server Training Agency

A. Licensees and servers shall participate in a training program with an approved responsible beverage service training agency, selected and approved by the City.

B. Compensation. The approved training agencies shall not be compensated or otherwise reimbursed by the City. The training agencies shall recover costs and profit through fees collected from the persons receiving the training.

C. Training. The approved training agencies shall certify the qualifications of all required participants as required by this Ordinance. All new employees, officers or agents shall complete the training with sixty (60) days following their hiring or other event which subjects that person to the training requirement. New employees, officers or agents failing to complete the training within the prescribed time shall not work on the premises after the expiration of that period until they have successfully completed such training.

D. Standards for Certification. The training agency must reasonably instruct upon and certify the participants' competence in at least the following:

1. Pertinent laws and ordinances related to the sale of alcohol;
2. Verification of age, forms of identification and usual methods of false or misleading age identification;
3. The effect of alcohol on humans and the physiology of alcohol intoxication, including the effect of alcohol on pregnant women, their fetuses and other situations involving the use of alcohol by persons vulnerable to its effects;
4. Recognition of the signs of intoxication;
5. Strategies for intervention and prevention of underage and intoxicated persons from consuming alcohol;
6. The licensee's policies and guidelines, including the employee's role in observing those policies, and
7. Potential liability of persons serving alcohol.

E. Qualifications for Training Agencies. The training agency shall have a minimum of two (2) years actual experience in responsible beverage service and alcohol awareness training. Each instructor shall be certified to teach his or her subject matter.

F. Personnel and Physical Resources. The training agencies shall have sufficient personnel and physical resources to provide responsible beverage service training course to newly hired employees, officers and agents as required by this Ordinance.

SECTION V.
Penalties

Consistent with the provisions of City Ordinance 2004-27, the Mayor, or his or her designee, is charged with primary responsibility for enforcement of this Ordinance.

Penalties for violation of this Ordinance shall be assessed against the person or entity holding a license for the sale of alcoholic beverage under City Ordinance 2004-27. The individual employee shall not be civilly or criminally liable for violations of this Ordinance. The penalties assessed against the Licensee for violations of this Ordinance are as follows:

A. For the first violation, a fine not exceeding Fifty Dollars (\$50.00).

B. For Subsequent violations, within a two-year period, a fine not exceeding Five Hundred Dollars (\$500.00) and suspension of the licensee's City liquor license for not less than three (3) days nor more than thirty (30) days. The licensee may redeem the days of that suspension for the payment of Five Hundred Dollars (\$500.00) each.

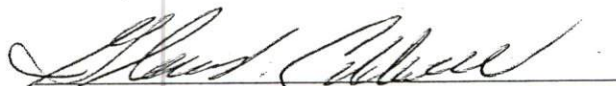
C. Each day of each violation shall constitute a separate violation.

SECTION VI

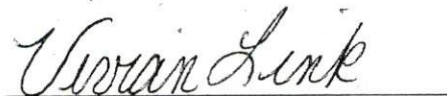
This Ordinance, upon its adoption and approval according to law, shall be effective as soon as practical.

SECTION VII

All Ordinances or parts of any Ordinances in conflict herewith, to the extent of such conflict, if any, are hereby repealed.


Glenn V. Caldwell, Mayor
City of Williamstown, Kentucky

ATTEST:


Vivian Link, City Clerk/Treasurer
City of Williamstown, Kentucky

2004-28

1 st Reading	<u>11/16/04</u>
2 nd Reading	<u>12/06/04</u>
Published	<u>12/16/04</u>

**CITY OF WILLIAMSTOWN, KENTUCKY
ORDINANCE NO. 2004 -27**

RECEIVED

2005 JAN 28 A 9:51

AN ORDINANCE OF THE CITY OF WILLIAMSTOWN, GRANT COUNTY, KENTUCKY, RELATING TO THE LICENSING OF RESTAURANTS AND DINING FACILITIES FOR THE SALE OF ALCOHOLIC BEVERAGES BY THE DRINK WHEN SUCH FACILITIES SEAT A MINIMUM OF ONE HUNDRED (100) PERSONS AND DERIVE A MINIMUM OF SEVENTY PERCENT (70%) OF GROSS RECEIPTS FROM THE SALE OF FOOD.

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

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

WHEREAS: The local option election was conducted pursuant to KRS 242.185 and approved. It is now the responsibility of the City to adopt regulations reasonably calculated to assure the sale of alcoholic beverages consistent with the legislative intent.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF WILLIAMSTOWN, IN GRANT COUNTY, KENTUCKY, AS FOLLOWS:

SECTION I

Purpose.

This Ordinance is adopted to regulate the sale of alcohol pursuant to KRS 242.185 in such a manner as to effectuate the legislative intent of that statute. That intent is to permit the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat at least one hundred (100) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food. To realize this intent, the City shall implement this Ordinance in such manner as to assure that:

A. Restaurants and dining facilities licensed under this Ordinance shall seat a minimum of one hundred (100) persons. Only permanent seating, excluding bar-type stools, patio seating or temporary chairs available as needed, satisfied this seating threshold.

B. The sale of alcoholic beverages shall be accessory to the sale of food, offered only during times in which the licensee's kitchen and food service staff is on duty.

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

SECTION II

Application Review.

No alcoholic beverage shall be sold in the City, except as authorized under KRS 242.185 and this Ordinance. Authorization under this Ordinance shall be obtained only upon the City's receipt and approval of an application in accordance with this Ordinance, the City's issuance of a license, the ABC's receipt and approval of an application in accordance with applicable law and the ABC's issuance of a license.

Application submittal and review shall be conducted as follow:

A. Application and Fee.

1. Persons requesting approval and license authorizing the sale of alcoholic beverages by the drink pursuant to KRS 242.185 and this Ordinance shall submit a completed application to be obtained from the Office of Mayor. The Office of Mayor shall determine the form of this application and the information required by it. That form and information shall be reasonably calculated to permit a reviewing officer to determine compliance with this Ordinance. In any event, the City shall accept an application in the form approved and accepted by the Alcoholic Beverage Control (ABC). Any applicant utilizing the ABC form shall provide any additional information not otherwise required by the ABC form by supplemental attachment to the application.
2. Applicants for a license under this Ordinance shall pay a license fee of Eight Hundred Dollars (\$800.00) pursuant to the provisions of KRS 243.070.

B. Supplemental Information. An applicant currently operating a restaurant or dining facility of comparable size to that which is the subject of the application and one that offers the sale of alcoholic beverages by the drink shall supplement the required application. The required supplemental data shall include information related to its current operation, which reasonably demonstrates the likelihood that applicant's business in Williamstown will yield income earned through the sale of food equal to or greater than seventy percent (70%) of its gross receipts. This supplement data shall include, but not necessarily be limited to, the following specific information:

1. The population of the community in which it currently operates;
2. Alcohol sales permitted in ;the community in which it currently operates; and
3. The hours of operation, including any differentiation between the hours during which food and drinks are sold.

C. Periodic Information. Applicants to whom a license is issued authorizing the sale of alcoholic beverages by the drink pursuant to this Ordinance shall provide periodic information demonstrating compliance with the continuing requirement that seventy percent (70%) of the applicant's business income is earned form the sale of food.

This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly tax filings. Regardless of the applicant's filing schedule, the first of the applicant's periodic information shall be submitted not later than six months after applicant commenced sale of alcoholic beverages pursuant to this Ordinance.

This information shall consist of a certificate from a Certified Public Accountant familiar with the applicant's pertinent business records. This certificate shall state:

"I have conducted a limited scope audit according to accepted accounting principles of the pertinent records of _____, Licensee under Ordinance 04-_____, and certify that the Licensee earned at least seventy percent (70%) of its gross receipts from the sale of food during the quarter ending _____."

This certificate shall include a brief description of the methodology utilized in the determination of the certified percentage.

D. Administrating Officer. The City Officer responsible for administering this Ordinance shall be the City Administrator or such City employee as the Mayor shall designate. All transactions required for compliance or enforcement of this Ordinance shall be directed to or issued by the Mayor and/or the City Administrator. He or she shall review the applications along with supplemental and periodic information and issue licenses authorizing the sale of alcoholic beverages by the drink pursuant to this Ordinance. The City's Administrating Officer and employees with duties arising under this Ordinance shall comply with KRS 241.180 and 190.

E. Forms. All forms reasonably necessary for the implementation of the Ordinance shall be provided by the Mayor's office.

F. Auditing Authority. The Mayor and the City's Administrating Officer is empowered to demand access to the pertinent business records of any applicant or licensee for the purpose of conducting an independent audit of those records to substantiate compliance with this Ordinance. The Mayor and the City's Administrating Officer may obtain such outside professional services as are reasonably necessary to conduct the audit. In the event the independent audit reveals non-compliance by the applicant or licensee, the cost of the audit shall be assessed to the licensee.

SECTION III **Issuance and Renewal of Licenses.**

A. Issuance: Upon satisfactory compliance with all City imposed requirements, the City's Administrating Officer shall sign an acknowledgement of that compliance. The ABC shall rely upon that acknowledgement and upon review of the application to the ABC, shall issue an appropriate license. Upon presentation of the ABC issued license, the City's Administrating Officer shall issue the City's license.

B. Renewal: A license issued pursuant to this Ordinance shall authorize the sale of alcoholic beverages for one year. The license may be renewed annually thereafter upon a showing of compliance with applicable regulations and the payment of a renewal fee of Eight Hundred Dollars (\$800.00).

SECTION IV.
Operational Regulations.

A. Hours: No licensee operating pursuant to this Ordinance shall be open for business earlier than 6:00 a.m. or later than 12:00 midnight, Monday through Thursday. Friday and Saturday license operating hours pursuant to this Ordinance shall be 6:00 a.m. and no later than 1:00 a.m.

B. Sales Permitted Only When Food Available: The provisions of Section Four (A) above, notwithstanding, no licensee operating pursuant to this Ordinance shall sell alcoholic beverages at any time at which the licensee's kitchen and food service staffs are off duty. This requirement is necessary for accomplishment of the legislative intent stated in Section I, above, and in KRS 242.185. No carry-out alcohol sales shall be permitted and no alcohol shall be taken off the premises.

C. No Sunday Sales Permitted: The license issued under KRS 242.185 and this Ordinance authorizes the sale of alcoholic beverages only Monday through Saturday. Sunday sales of alcoholic beverages can be authorized only upon the City's adoption of an Ordinance expressly providing for such sales.

SECTION V.
Violations

A. Fines: Violations of this Ordinance shall be punishable by fine of up to Five Hundred Dollars (\$500.00) for each offense. Complaints alleging violations of this Ordinance may be filed in the Grant District Court and prosecuted as all other municipal ordinance violations. Each day of each violation shall constitute a separate offense.

B. Administrative Action: Violations of this Ordinance shall constitute grounds for administrative action by the City's Administrating Officer. Appropriate actions by the Administrating Officer upon the determination of a violation shall include a warning and probationary period in which the violations is corrected, a license suspension or license revocation. Suspensions may be satisfied by the payment of a fine of Fifty Dollars (\$50.00) per day. The action of the Administrating Officer shall be commensurate with the seriousness of the violation. Upon a finding of a subsequent material violation, the license may be suspended for such time as is commensurate with the seriousness of the offenses or, if previously suspended, revoked. Subsequent suspensions may be satisfied by the payment of a fine of Fifty Dollars (\$50.00) per day for no more than one-half (1/2) of the suspension.

C. Show Cause Hearing: Hearings on alleged violations shall be in the manner of a "show cause" hearing at which the licensee shall bear the burden of persuasion that the alleged violation did not occur. 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 issue; and
4. A finding reasonably supported by the evidence.

E. Hearing Officer: Pursuant to Section Two (D) above, the City Administrating Officer may designate a City employee or other person as the hearing officer to conduct the hearing provided

for in this Section. In the event of such a designation, the Hearing Officer's determination shall be in the form of a recommendation upon which the City Administrating Officer shall determine appropriate action.

2005 JAN 28 A 9:51

F. Appeal: Pursuant to KRS 241.200 all orders of the City Administrating Officer may be appealed to the Alcoholic Beverage Control Board.

ALCOHOLIC
BEVERAGE CONTROL


G. Referral to ABC: In lieu of the hearing authority provided above, allegations of violations of this Ordinance may be referred to the Alcoholic Beverage Control Board for determination.

SECTION VI


This Ordinance, upon its adoption and approval according to law, shall be effective as soon as practical.

SECTION VII

All Ordinances or parts of any Ordinances in conflict herewith, to the extent of such conflict, if any, are hereby repealed.


Glenn V. Caldwell, Mayor
City of Williamstown, Kentucky

ATTEST:


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