

ORDINANCE NO. 8, 2021

AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY
ADOPTING THE COMPREHENSIVE REGULATIONS FOR THE
LICENSING AND OPERATION OF ESTABLISHMENTS FOR
THE SALE OF ALCOHOLIC BEVERAGES WITHIN THE CITY
AND PROVIDING FOR THE RESPONSIBILITIES OF THE CITY
ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR,
REPEALING ORDINANCE NO. 59, SERIES OF 2018, AND ANY
AMENDMENTS THERETO.

* * * *

WHEREAS, there was a local option election held in four precincts in the City, Wright, Moore, Ginn and Herbst, in October, 1980 which resulted in a favorable vote for the limited sale of alcoholic beverages within those precincts under the provisions of KRS 242.1292, and

WHEREAS, in 1989 the Boyd County Board of Elections merged the boundaries of the Herbst and Ginn precincts into the Herbst-Ginn Precinct, and the Board of City Commissioners amended the alcohol control ordinance to effect that merger, and

WHEREAS, in 2001, the Boyd County Board of Elections merged the Herbst-Ginn Precinct with the Wright Precinct, creating the Central Precinct, it is the desire of this Board of City Commissioners to amend its alcohol ordinance to effect this change, and

WHEREAS, in 2007, the Boyd County voters voted in favor of alcohol by the drink at restaurants with a seating capacity of 100 that derive 70% of their gross receipts from food. Licenses, therefore, for such restaurants shall be available in Ashland at locations zoned for restaurants, 60 days from the date the election results were certified, and

WHEREAS, a local option election was held for the limited sale precincts in the City, Central and Moore Precincts on February 26, 2013 which resulted in a favorable vote for the sale of alcoholic beverages on Sundays, and

WHEREAS, on June 25, 2013 the Commonwealth of Kentucky passed legislation which significantly changed license types, application process and fees, and

WHEREAS, on March 30, 2017, the Commonwealth of Kentucky passed legislation to amend KRS 243.0341 allowing a city with a population of 20,000 or more to adopt an ordinance for 50 seat restaurants if that City already has 100 seat restaurants through a local option election, and

WHEREAS, on June 29, 2017, legislative changes became effective which requires the City of Ashland to make changes to the comprehensive alcohol ordinance accordingly, and

WHEREAS, on January 23, 2018, a special alcohol election was held in the Carp Precinct in Ashland which resulted in a favorable vote for the limited sale of alcoholic beverages within that precinct under the provisions of KRS 242.1292, and

WHEREAS, a local option election was held in Boyd County, Kentucky on November 3, 2020, by which Boyd County voters approved the sale of alcoholic beverages in Boyd County, Kentucky as certified by the Boyd County Board of Elections pursuant to KRS 242.110, and the voters in Central and Moore Precincts of the City of Ashland, Kentucky voted in favor of continuing the limited sale of alcoholic beverages in those precincts as certified by the Boyd County Board of Elections pursuant to KRS 242.1292(10), and

WHEREAS, pursuant to KRS 242.1292(10), Carp Precinct remained a limited sale precinct by operation of law;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ASHLAND, KENTUCKY, AS FOLLOWS:

SECTION 1. SHORT TITLE.

This Ordinance shall be known and may be cited as the "Alcoholic Beverage Control Ordinance" of the City of Ashland ("City").

SECTION 2. DEFINITIONS.

Words used throughout this Ordinance, unless the context requires otherwise, shall have the same definitions as set out in the Kentucky Alcoholic Beverage Control Laws (Chapters 241, 242, 243 and 244 of Kentucky Revised Statutes) of the Commonwealth of Kentucky, and all amendments and supplements thereto.

SECTION 3. SCOPE.

Irrespective of title or headings, the sections of this ordinance shall be construed to apply to the traffic in both malt beverages and distilled spirits and wine where the context permits such application. All provisions of this Ordinance shall apply in all respects to licenses and licensees in limited sale precincts under KRS 242.1292 and to licenses and licensees in wet precincts pursuant to KRS 242.020, 242.050 and 242.110 unless otherwise specifically provided herein.

Nothing in this Ordinance shall excuse or relieve a licensee or the agent or employee of any licensee located within the City, from the restrictions, requirements and penalties of any other Ordinance of the City or of any Statute of the Commonwealth of Kentucky relating to violations pertaining to alcoholic beverages.

SECTION 4. ADOPTION OF STATE ALCOHOLIC BEVERAGE CONTROL LAW.

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

SECTION 5. CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR - APPOINTMENT; SALARY.

(a) The City Manager shall, consistent with the provisions of KRS 83A.150 (7) (b) and KRS 241.170, appoint a City Alcoholic Beverage Control Administrator ("City Administrator") subject to approval of the Board of City Commissioners of the City of Ashland ("Board of Commissioners").

(b) The salary for said office shall be fixed from time to time by the Board of Commissioners.

(c) The functions of the City Administrator shall be the same with respect to City licenses and regulations, as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky ("ABC Board") with respect to state licenses and regulations. No regulation of the City shall become effective until it has first been approved by the Board of Commissioners, and no such regulation shall be less stringent than the applicable statute or regulation of the ABC Board.

(d) The City Administrator and his investigators which shall include all officers of the Ashland Police Department shall have coextensive jurisdiction within the boundaries of the City. The City Administrator, his investigators, and the officers of the Ashland Police Department may inspect any premises where alcohol or malt beverages are manufactured, sold, stored, or otherwise trafficked, without first obtaining a search warrant. Ashland Police Department officers shall have full police powers while performing any such inspections.

(e) The City Administrator, his investigators and City of Ashland Police Department officers shall have available at all reasonable times for their inspection all books and records required to be maintained by licensees pursuant to state law and city ordinances, including audio and visual records and the City Administrator shall receive copies of all reports submitted by licensees to the State Alcoholic Beverage Control Board.

SECTION 6. OATH, ETHICS.

(a) The City Administrator before entering upon his/her duties as such, shall take the oath as prescribed in Section 228 of the Constitution and shall be bound by the same ethical requirements prescribed in KRS Chapter 11A.

LICENSES

SECTION 7. LICENSES.

Section 7 Subsections (a), (b), (c), (d) and (e) herein shall apply only to limited sale precincts under KRS 242.1292, while Section 7, Subsections (f) and (g) shall apply to both limited sale precincts under KRS 242.1292 and wet precincts under KRS 242.020, 242.050 and 242.110.

As used in this section related to licensees within the limited sale precincts:

“restaurant” means a facility where the usual and customary business is the preparation and serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty (50%) of its food and alcoholic beverage receipts from the sale of food at the premises and has dining facilities for not less than fifty (50) persons.

“hotel” means a hotel, motel or inn which can demonstrate to the City Administrator that the gross sales of the restaurant located within such hotel from the sale of food for consumption on the premises is not less than fifty percent (50%) of the total of gross sales of such licensed restaurant for the annual period and has dining facilities of not less than fifty (50) persons.

The City Administrator shall review the licensee's records and monthly returns required under Section 24 to determine if the licensee has met this definition to permit renewal of such license.

In no event shall a license for renewal be issued for any restaurant or any dining facility in a hotel, located in a limited sale precinct, unless the applicant can demonstrate to the Administrator that gross receipts of the restaurant or the dining facility from the sale of food for consumption on the premises is reasonably estimated to be not less than fifty percent (50%) of the total gross receipts of such restaurant or dining facility for the license period and has dining facilities for not less than fifty (50) persons.

Pursuant to the provisions of KRS 242.1292(6) in each limited sale precinct the following licenses are provided for:

(a) **Central**

Five (5) licenses permitting the **package** sale of alcoholic beverages at retail.

Eleven (11) licenses permitting the sale **by the drink** for consumption by the general public on the premises of a restaurant or a hotel/motel or inn.

(b) **Moore Precinct**

Four (4) licenses permitting the **package** sale of alcoholic beverages at retail.

Eleven (11) licenses permitting the sale **by the drink** for consumption by the general public on the premises of a restaurant or a hotel/motel or inn.

(c) **Carp**

Three (3) licenses permitting the **package** sale of alcoholic beverages at retail.

Four (4) licenses permitting the sale **by the drink** for consumption by the general public on the premises of a restaurant or a hotel/motel or inn.

The licenses listed above shall be otherwise consistent with the qualifications and requirements of the Kentucky Revised Statutes.

Licenses issued permitting the sale by the drink for consumption by the general public on the premises in limited sale precincts shall be granted only to a hotel with not less than fifty (50) sleeping units and having dining facilities for not less than fifty (50) persons or to bona fide restaurants open to the general public having dining facilities for not less than fifty (50) persons.

(c) Pursuant to KRS 242.1292(6)(b) special private club licenses to sell alcoholic beverages by the drink for consumption on the premises may be granted to any non-profit, social, fraternal, military or political organization or club established and maintained for the benefit of members only, and which otherwise meet the criteria set out in KRS 243.270.

- (1) Membership qualifications shall be consistent with their national organization, and a policy for courtesy membership or any temporary membership privilege will not be tolerated. The existence of such a membership policy shall be a violation of this Ordinance.
- (2) Should membership qualifications be altered the club making such change shall furnish a copy of the proposed alteration within ten (10) days to the City Administrator. Failure to furnish such change shall constitute a violation.
- (3) Clubs licensed to sell alcoholic beverages will provide to the City Administrator a list of its officers and notify the City Administrator of any change thereto. Club officers for the licensing year shall not have been convicted of any felony within the past five years or two misdemeanors or offenses directly or indirectly attributable to the use of intoxicating liquors within the past two years.

(d) Other licenses permitted under KRS 243.030 and KRS 243.040 in the limited sale precincts which KRS 243.070 permits the City to impose fees for the privilege of such license may be issued by the City Administrator.

(e) By the drink licenses at restaurants and dining facilities which seat a minimum of fifty (50) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food, permitted at any location within the City that is zoned for such commercial purpose.

The City Administrator shall review the licensee's records and monthly returns required under Section 24 to determine if the licensee has met this definition to permit renewal of such license.

In no event shall a license for renewal be issued for any restaurant or dining facility in a hotel, motel or inn unless the applicant can demonstrate to the Administrator that gross receipts of the restaurant or the dining facility from the sale of food for consumption on the premises is reasonably estimated to be not less than seventy percent (70%) of the total gross receipts of such restaurant or dining facility for the licensee period and has dining facilities for not less than fifty (50) persons.

(f) While KRS 244.330 permits one bar, counter or similar contrivance in any licensed premise under a single retail drink license, due to modern business practices and the large interior areas of some licenses, it may be necessary to provide more than one bar within a licensed premise to effectively serve the patrons at such premises. A supplemental bar may be allowed to a licensee, if such licensee can show the City Administrator the need for such supplemental bar and upon payment of an additional fee. A supplemental bar license may be issued to a licensee upon a showing to the City Administrator of good cause and need for the supplemental license, and upon payment of a fee equivalent to the amount of the annual license fee paid by the licensee. This supplemental license may only be issued for the use on the premises for which the applicant's existing license was issued.

Additional service bars are permitted as provided under KRS 244.330 not in rooms in which members or guests or patrons of the place shall be permitted to come, and no distilled spirits or wine shall be served at service bars.

(g) Entertainment. Any licensee under this section desiring to provide entertainment to patrons of such licensed premise must first obtain a separate entertainment license by application to the City Administrator under this section in the form approved by the City Manager or his designee.

- (1) Term of such license shall be concurrent with the retail drink license.
- (2) Fee for such license shall be one hundred dollars (\$100.00).
- (3) This license shall be subject to the same sanctions as the retail drink license.

No licensee shall offer or permit nudity, or adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, stage shows, cabarets or sectional entertainment centers on any licensed premises. No licensee shall permit explicit sexual activity, whether actual or simulated, upon any licensed premises. No licensee shall sponsor or permit wet T-shirt or wet clothing contests, lingerie fashion shows, mud wrestling, jello wrestling or similar activities, nor shall a licensee allow dancing with touching for compensation (including but not limited to wages, tips or gratuities), or any other service, display or contest requiring physical contact between patrons and/or patrons and employees on any licensed premises.

The purpose of this section is to provide City review of the type of such entertainment to promote the public health, safety, morals and welfare, and such licenses will not be unreasonably withheld, but periodic review will occur to protect those interests of the community set out herein.

SECTION 8. APPLICATION.

(a) Any applicant shall have the notice of intention to apply for a license to sell alcoholic beverage placed in a newspaper meeting the requirements of KRS Chapter 424.

The advertisement shall state the name and addresses of the members of the partnership if the applicant is a partnership, as well as the name of the business and its address, or, if the applicant is a corporation, the names and addresses of the principal officers and directors of the corporation, as well as the name and addresses of the corporation itself, the location of the premises for which the license is sought, and the type of license to be applied for.

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

(b) All licenses granted under this Ordinance shall be approved by the City 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 State ABC Department and/or the City Administrator as amended and supplemented from time to time.

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 State Statute and ABC Board by regulation requires. The City application shall be in such form as designated by the City Administrator. Each application shall be accompanied by a certified check, cash or a postal or express money order for the license fee. Promptly upon receipt thereof the City Administrator shall pay the same to the City Finance Department. The furnishing of false information on an application hereunder shall constitute cause for denial or revocation of a license.

SECTION 9. INVESTIGATION OF APPLICANTS.

Applications made pursuant to KRS 243.380 and KRS 243.390 shall first be submitted to the City Administrator for review and action prior to submission to the State. Applications shall be fully compliant with cited statutes including all supportive documentation and fees submitted therewith.

Should the City Administrator at any time have reasonable grounds to believe that any employee of a licensee, or any stockholder, agent or employee of a licensed corporation, has a criminal record, he shall have the authority to require such person to appear in person, with proper photo identification (military identification card, passport, drivers license) at the police department of the City for the purpose of having his or her fingerprints taken.

No license application will be approved for any person, firm or corporation who is delinquent in payment of accounts with the City, including but not limited to property taxes, water bills, business privilege and net profit fees, occupational taxes, and outstanding loan payments to any City entity.

The City may require such additional information regarding the applicant as it deems appropriate, considering the nature of the business, including review of past payment history, credit information and criminal record, and may conduct an appropriate investigation regarding the information provided by an applicant to assist the City Administrator in his/her review thereof.

SECTION 10. PERSONS WHO MAY NOT BE LICENSED.

- (a) No person shall become a licensee who:
- (1) Has been convicted of any felony until five (5) years have passed from the date of conviction, release from custody or incarceration, parole, or termination of probation, whichever is later;
 - (2) Has been convicted of any misdemeanor involving a controlled substance that is described in or classified pursuant to KRS Chapter 218A in the two (2) years immediately preceding application;
 - (3) Has been convicted of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages in the two (2) years immediately preceding the application;
 - (4) Is under the age of twenty-one (21) years;
 - (5) Has had any license relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any statute within KRS Chapters 241 to 244, until the expiration of two (2) years from the date of revocation, or

- (6) Is not a citizen of the United States and has not had an actual, bona fide residence in this state for at least one (1) year before the date on which the application for a license is made. This subsection shall not apply to applicants for manufacturers' licenses, to applicants that are corporations authorized to do business in this state, or to persons licensed on March 7, 1938.

(b) A partnership, limited partnership, limited liability company, or corporation shall not be licensed if:

- (1) Each principal owner, partner, member, officer, and director does not qualify under subsection (1) (a), (b), (c), (d) and (e) of this section;
- (2) It has had any license relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any statute within KRS Chapters 241 to 244, until the expiration of two (2) years from the date of revocation or conviction; or
- (3) Any principal owner, partner, member, officer, or director, or any business entity in which they were directly or indirectly interest, has had any license revoked for cause or has been convicted of a violation of any statute within KRS Chapters 241 to 244, until the expiration of the later of two (2) years from the date of the revocation or conviction.

(c) The provisions of this section shall apply to anyone applying for a new license under this ordinance but shall not apply to those who renew a license or for a supplemental license where the original license was issued prior to the adoption of this ordinance.

(d) A person shall not evade license disqualification by applying for a license through or under the name of a different person. The state administrators shall examine the ownership, membership, and management of all license applicants, and shall deny the application if a disqualified person has a direct or indirect interest in the applicant's business. The department may issue administrative subpoenas and summonses to determine ownership of an applicant or to investigate alleged violations by a licensee.

SECTION 11. REFUSAL OF LICENSE.

A City license shall be refused:

(a) If the applicant or the premises for which the license is sought does not comply fully with all alcoholic beverage control statutes, the regulations of the ABC Board, and the provisions of this Ordinance relative to the regulations of the manufacture, sale and transportation of alcoholic beverages, and all regulations of the City Administrator.

(b) If the applicant has not obtained approval from the City Administrator for a license required at the proposed premises.

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

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

A license (new issuance, transfer or renewal) may be refused by the City Administrator for any reason which he/she, in the exercise of his/her sound discretion, may deem sufficient. The City Administrator must notify the applicant in writing of the denial and reason for denial by registered or certified mail.

Among some of those factors that the City Administrator shall consider in the exercise of his/her discretion are: public sentiment in the area; number of licensed outlets in the area; potential for future growth; type of area involved; type of transportation available; financial potential of the area; and applicant's status as a delinquent taxpayer as defined in KRS 131.1815.

SECTION 12. HEARING.

Should the applicant or licensee request the City Administrator to hold a hearing, the general practice procedures found in the Kentucky Rules of Civil Procedure shall apply as shall the following:

(a) Appearances. Any applicant or licensee may appear and be heard in person, or by or with duly appointed attorney, and may produce under oath evidence relative and material to matters before the board.

(b) Briefs. Briefs may be filed at the option of the applicant or licensee or at the request of the City Administrator.

(c) Rules of Evidence. The rules of evidence governing civil proceedings in courts in the Commonwealth of Kentucky shall govern hearings before the City Administrator; provided however, that the hearing officer may relax such rules to the degree in his/her judgment, the ends of justice will be served by doing so.

(d) Subpoenas. The City Administrator shall have subpoena power for such hearings and shall issue same at request of the applicant made with names and addresses of those desired to be subpoenaed.

(e) Transcript. Upon request in advance, in writing, and at the cost of the applicant or licensee the hearing may be transcribed.

(f) Decisions. All decisions made by the City Administrator resulting from such hearing shall be reduced to writing and shall be based upon the evidence developed at the hearing, and applicable law.

SECTION 13. ISSUANCE OF CITY LICENSE.

The City Administrator shall transmit fees upon collection to the City Finance Department. City Licenses shall be issued by the City Administrator upon receipt of notice from the ABC Board Administrator of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241.200; KRS 243.360, et seq.

SECTION 14. FORM OF LICENSES.

All City licenses shall be in such form as may be prescribed by the City Manager or his designee and shall contain:

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

Each kind of license shall be printed so as to be readily distinguishable from the other kinds.

SECTION 15. POSTING OF LICENSES.

Before commencing or doing any business for the time for which a license has been issued, the license shall be posted at all times and displayed in a conspicuous place in the room or principle room where the business is carried on, so that all persons visiting the place may readily see the license. Licenses listed in this Ordinance shall be enclosed in a wood or metal frame enclosing a clear glass space so that the whole of the license may be seen.

No licensee shall post or permit to be posted, upon 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.

SECTION 16. ANNUAL FEES.

Pursuant to the provisions of KRS 243.070 the City annual license fees shall be the maximum amounts permitted by KRS 243.030 and 243.040 with the exception that a wholesaler's annual license fee shall be \$400.00.

In order to engage in sale or trafficking of alcoholic beverages in the City, a party must be a license holder of one or a combination of the licenses required hereunder.

SECTION 17. PAYMENT OF LICENSE FEES.

The license fee and/or regulatory tax for every license issued under this Ordinance shall be payable by the person making application for such license and/or licensee, and no other person, firm or corporation shall pay for any license issued under this Ordinance. In addition to all other penalties provided in this Ordinance, a violation of this section shall authorize and require the revocation of the license, and also the revocation of the license, if any, of the person, firm or corporation so paying for the license and/or tax of another.

SECTION 18. EXPIRATION DATE; DATE FEES DUE; FRACTIONAL FEES.

(a) All City licenses shall expire on June 30 of each year. The renewal by the City Administrator of the license shall not be construed to be a waiver or condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the license therefore.

(b) Application for a license made after July 1 of any year, shall result in a charge, if the license is issued, of an amount equal to one-twelfth of the annual license fee for each calendar month or part thereof, including the month in which the license is granted, until the following July 1, except that no license issued shall be charged for a shorter period than six (6) months. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.

SECTION 19. REFUND OF LICENSE FEES.

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

SECTION 20. LOST OR DESTROYED LICENSES.

When a license shall be lost or destroyed without fault on the part of the licensee or his agent or employee, a duplicate in lieu of the original license shall be issued by the City Administrator after he/she shall be satisfied as to the facts, provided, however, that the person applying for said duplicate license shall pay a fee of ten dollars (\$10.00) for issuing said duplicate.

SECTION 21. REVOCATION OR SUSPENSION.

(a) Any license may be revoked or suspended by the City Administrator if the licensee shall have violated any of the provisions of Kentucky Revised Statutes Chapters 241, 243 or 244, or any rule or regulation of the ABC Board or of the department of revenue relating to the regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or 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 any provision of 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 Kentucky Revised Statutes Chapters 241, 243 and 244 to be created, or if any clerk, agent, servant, or employee of any licensee shall violate any of the laws, regulations or ordinances above referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any such license may be revoked or suspended for any cause which the City Administrator in the exercise of his sound discretion deems sufficient. A license may be revoked or suspended for any of the reasons for which the City Administrator would have been required to refuse a license if the facts had been known.

(b) 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 licensed premises;
- (2) Making any false, material statements in an application for a license or supplemental license;
- (3) Violation of the provisions of Section 17;
- (4) Conviction of the licensee or any of his clerks, servants, agents or employees of two (2) violations or misdemeanors directly or indirectly attributable to the manufacture, sale, transportation, or use of alcoholic beverages within two (2) consecutive years;
- (5) Any felony;
- (6) 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, Sections 16, 24 or 32 of this ordinance 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.
- (7) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600 and 243.610 or granted under any act of congress relative to the regulation of the manufacture, sale and transportation of alcoholic beverages. Any license issued must be revoked or suspended if the licensee sells the alcoholic beverages at a price in excess of the price set by federal or state regulations.

- (8) Setting up, conducting, operating or keeping, on the licensed premises, any gambling game, device, machine, contrivance, lottery, gift enterprise, 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. This section shall not apply to contests in which eligibility to participate is determined by chance and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of lottery tickets sold under the provision of KRS Chapter 154A.
- (9) Conviction of the licensee, his agents, servants, or employees for:
 - (i) The sale or use upon the licensed premises of those items described in KRS 218A.050 through 218A.130 as controlled substances;
 - (ii) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 through 218A.130 as controlled substances;
 - (iii) Knowingly receiving stolen property upon the licensed premise.
- (10) Any cause for refusal or revocation of a state license as set forth in the Kentucky Revised Statutes, specifically including without limitation, KRS 244.120.

SECTION 22. NOTICE TO LICENSEE; SURRENDER OF LICENSE; STOCK; HEARING.

(a) The City Administrator shall furnish to licensee a copy of this Ordinance at the time the City license is issued and a receipt for same shall be executed by the licensee. Any changes or amendments to same shall be forwarded to licensee at address on the license. Failure to receive or review such changes or amendments or review the Ordinance shall not be an excuse or justification for any violation or prevent, remit or decrease any penalty for a violation.

(b) All restrictions and prohibitions relating to retail package and drink licenses under this Ordinance and KRS Chapter 241, 242, 243, 244 and rules and regulations promulgated by the ABC Board shall have application to the club licenses.

(c) Within three (3) days after any order of revocation of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice 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 City Administrator. If the revoked license is not forthwith surrendered by the licensee, the Chief of the Police at the request of the City Administrator shall immediately cause one of his officers to take physical possession of the license and return it to the City Administrator.

(d) When a license has been revoked the former licensee may, with prior approval of the City Administrator dispose of and transfer his stock of alcoholic beverages to a licensee, but such a disposition of stock on hand shall not be delayed longer than ninety (90) days in the case of wholesalers or distributors nor longer than twenty (20) days in the case of retailers.

(e) Hearings conducted by the City Administrator relating to suspension or revocation shall be conducted in the manner prescribed in Section 12. Notice of such hearing shall be mailed to licensee at the address on his application by pre-paid certified mail return receipt requested. Notice shall set the time and place for such hearing and contain charges of violations.

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

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

SECTION 23. 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 City Administrator.

Such applicant or location proposed for transfer or assignment must meet the same requirements and/or criteria applicable to the respective licensee in issue.

SECTION 24. REGULATORY LICENSE FEE.

This section shall apply only to licenses in limited sale precincts under KRS 242.1292 unless facts and circumstances as applied to existing law or amendments to applicable state or local laws shall allow the imposition of regulatory license fees in precincts within the city limits of Ashland, Kentucky that are wet pursuant to KRS 242.020, 242.050 and 242.110 in which case the

regulatory fee and the provisions of this section shall apply to all precincts within the City of Ashland.

(a) A regulatory license fee will be imposed on the gross receipts of sale of alcoholic beverages of each license issued under Section 7. This rate will be set and adopted by Ordinance during each budget period. The rate is based upon the reasonable estimate compiled by the affected City departments of the costs involved in regulation, administration or policing of this Ordinance. When the Board of Commissioners adopts its annual budget each year the percentage rate being charged shall be reviewed to insure full reimbursement to the City for the cost of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages, and the fee charged hereunder may be raised or lowered based upon the cost of the City to regulate and police the sale of alcoholic beverages. Such fee shall be in addition to any other tax, fee or license permitted by law, but a credit against such fee shall be allowed in an amount equal to the license or fee imposed under Section 16 and such regulatory fee shall be applied annually from July 1 to June 30.

(b) Payment of such fee shall accompany the tax returns approved for such use by the City Manager or his designee and shall be submitted to the City Administrator by the 20th day of each month for the preceding month's sales one-twelfth ($1/12$) of the fee required under Section 16 shall be deducted each month as credit.

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

(d) Penalty for the failure to file a return and/or to pay monthly remittance by its due date is five percent (5%) of the tax owed for each thirty days or fraction thereof. The total late filing penalty shall not exceed twenty five percent (25%) of the tax, provided, however, that in no case shall the penalty be less than \$10.00.

(e) Interest at the rate of eight percent (8%) per annum shall be applied to any late payments.

SECTION 25. CHANGE OF INFORMATION.

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

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

(c) The following information will be required concerning any new director, officer, or person who secures any interest in an alcoholic beverage license:

- (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 Ashland resident, indicate when residence established.
- (6) Whether or not he has any interest in any other license or corporation holding a license under this act.
- (7) Extent of stock ownership.

This information shall be filed with the City Administrator as an amendment of the application pursuant to which the license was granted and shall be provided to the City Administrator within thirty (30) days of the effective date of the reflected change.

SECTION 26. DORMANCY.

(a) Since under the provisions of KRS 242.1292 and Section 7 of this Ordinance a limited number of licenses exists in any limited sale precincts and with respect to quota package licenses in wet precincts, 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 any 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.

(b) Any license under which no business is transacted during a period of ninety (90) days shall become null and void. At the expiration of the ninety (90) day period the license shall be surrendered to the City Administrator.

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

(d) All renewal of licenses must be on file with the City Administrator within thirty (30) days after the expiration of the licenses 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 due to construction, an act of God, casualty, death, the acquisition or threatened acquisition of these premises by any federal, state, city or other governmental agency or private corporation, possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; that said licensee shall file a written verified statement no less than twenty (20) days from the expiration date of the license, setting forth these facts, and the City Administrator is hereby

authorized to extend the time for filing of a renewal of such license for a reasonable length of time within the sound discretion of the City 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.

PREMISES

SECTION 27. APPROVAL OF PREMISES.

The City Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until said applicant and his place of business shall have been approved by the county health department, city building inspector, city and/or state fire Marshal and all other inspections required by the Kentucky Building Code.

SECTION 28. PREMISES THAT MAY NOT BE LICENSED.

- (a) No license for the sale of alcoholic beverages shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease for a term of not less than the license period.
- (b) No premises shall be licensed for the sale of alcoholic beverages at retail except where the licensed premises and the entrance to the premises are on the street level and located in a business center or on a main thoroughfare.

This subsection shall not apply to a hotel, club or restaurant, provided the club or restaurant received a minimum of 50 percent (50%) of its income from the sale of food and has a minimum seating capacity of fifty (50) people at tables. In the class of cases described in this paragraph the administrator to whom the application is made may, in the exercise of his/her sound discretion, decide whether the premises are to be licensed

SECTION 29. APPLICATION OF ZONING REGULATIONS.

(a) To regulate the location of operations of all licensees under this ordinance in the City, the various zones or districts as fixed and established by the Ashland Planning and Zoning Ordinance and the zoning map adopted thereby, as the same may from time to time be amended, are hereby adopted as part of this Ordinance.

(b) No license under this ordinance shall be issued to any person, firm or corporation for selling at retail or wholesale any alcoholic beverages at any premises or location where such business is prohibited under the zoning ordinances or any other ordinance of the City.

Any license issued in violation of this subsection shall be void. Provided, however, that any person, firm or corporation, who or which held a City license for, and actually carried on there under, said business during or within the last month of the preceding license period may be granted a similar license by the City Administrator for the same business at the same premises or location.

SECTION 30. DISORDERLY PREMISE.

No person licensed to sell alcoholic beverages at retail shall cause, suffer, or permit the licensed premises to become disorderly. Acts which constitute disorderly premises consist of permitting patrons to cause public inconvenience, annoyance or alarm, or wantonly creating a risk through, fighting, violent, tumultuous or threatening behavior or making unreasonable noise; or refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or creating a hazardous or physically offensive condition by any act that serves no legitimate purpose. In the course of any one day of operation of a licensed premise should multiple violations of the ordinance or other statutes or ordinances of a public disorder nature, e.g. disturbing the peace, be reported and investigated by the City Police Department, such reoccurrence shall be reported to the City Administrator by the Chief of Police. The City Administrator shall in the interest of public health, safety, morals and welfare direct the Chief of Police to temporarily suspend the license in question for the remaining hours of the day in question by locking the premises after dispersing the patrons. The temporary suspension shall remain in effect until review of the alleged violations by the City Administrator, such review shall occur on the next business day.

SECTION 31.

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 a habitual drunkard or a person known to the seller or server to have been convicted of drunkenness as many as three (3) times within the most recent twelve-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.

SECTION 32. DELINQUENT TAXES.

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

SECTION 33. BOOKS, RECORDS AND REPORTS.

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

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

SECTION 34. ENFORCEMENT.

The City Administrator shall have concurrent jurisdiction with the City Police Officers, state alcoholic beverage control administrators and field representatives to enforce the provisions of this ordinance and Kentucky Revised Statutes, Chapters 241, 242, 243, 244 and applicable KARs.

SECTION 35. HOURS FOR THE SALE AND DELIVERY.

(a) Restaurant/By the Drink and malt beverage licensed premises may remain open for business daily from 9:00 a.m. until 2:00 a.m. prevailing time, Monday through Saturday and shall have their "last call for drinks" at 1:30 a.m., except that no sale of alcoholic beverages may be made from 2:00 a.m. on Sunday until 1:00 p.m. on Sunday or when prohibited by state statute. Sunday operating hours shall be from 1:00 p.m. to 1:00 a.m. on Monday and, shall have their "last call for drinks" at 12:30 a.m. on Monday. Licensed premises may be open outside of the hours stated herein so long as the licensee secures the alcoholic beverages in a locked manner denying access to customers.

(b) Premises licensed permitting the package sale at retail may operate for business daily from 9:00 a.m. until Midnight, prevailing time, Monday through Saturday and from 1:00 p.m. to 11:00 p.m. on Sunday.

(c) All deliveries of alcoholic beverages in the City shall be made between the hours of 6:00 a.m. and Midnight. No deliveries shall occur on Sunday.

(d) Premises licensed under a non-quota retail malt beverage package license may operate for business under that license from 9:00 AM until Midnight, prevailing time, Monday through Saturday and from 1:00 PM until 11:00 PM on Sunday.

SECTION 36. LOCKED OR CLOSED OFF DEPARTMENT.

If a licensee provides on his/her licensed premises a separate department in which is kept all stocks of alcoholic beverages and all apparatus connected with the sale of alcoholic beverages, and said department is kept locked during the period in which the sale of alcoholic beverages is not permitted, he/she shall be deemed to have complied with Section 35 of this ordinance.

If any distilled spirits or malt beverages are found on the outside of a locked or closed off department of any licensed premises to sell distilled spirits, wine or malt beverages at retail at any hours during which the licensee is prohibited by the Kentucky Revised Statutes or by this Ordinance from selling said distilled spirits, wine or malt beverages, a prima facie presumption shall arise that such distilled spirits, wine or malt beverages were kept on the outside of the locked or closed off department for the purpose of sale in violation of this Ordinance and/or Kentucky Revised Statute and shall be grounds for revocation or suspension of the license, and in addition to other penalties provided for violation of this section the City Administrator or Ashland Police Department shall be and are hereby authorized to confiscate such distilled spirits, wine or malt beverages.

SECTION 37. ADVERTISING.

(a) Licensees may advertise or cause to be advertised in any manner any product that the licensee is licensed to manufacture or sell unless prohibited by administrative regulations promulgated by the City Administrator.

(b) Advertising shall not be prohibited for the following:

- (1) advertising in newspapers, magazines or periodicals having a general circulation;

- (2) promotional advertising on radio or television limited to no more than the name of the licensee and the products the licensee is permitted to manufacture or sell;
- (3) promotional advertising containing the names of establishments or products displayed on uniforms or equipment of sporting teams;
- (4) promotional advertising mailed or delivered to a consumer's residence.
- (5) advertising during special civic and charitable events shall be permitted with prior approval by the City Administrator. A Special Event Advertising Form can be obtained from the City Administrator's office and shall be submitted at least five (5) days prior to the event.

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

(d) All signs must comply with the criteria set forth in the City's Sign Ordinance.

SECTION 38. CONDITIONS, PROHIBITIONS AND RESTRICTIONS.

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

(a) Every licensee hotel and licensee private club shall be entitled to serve such beverages as such licensee is entitled to serve in a separate room or rooms at banquets or dinners or where meals are served; however, no hotel/motel or private club shall maintain or operate or permit to be operated more than one bar or room where alcoholic beverages are sold and which is opened to the general public without first obtaining a separate license for each bar or room which is opened to the general public.

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

(c) No gambling or game of chance shall be permitted in any form on such licensed premises. Dice, slot machines, or any device of chance is prohibited and shall not be kept on such premises.

(d) It shall be unlawful for any licensee licensed under this Ordinance to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from the Regional Public Safety Communications Center 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 City Administrator shall have the authority to confiscate any and all such radio receiving apparatus.

(e) It shall be unlawful for any licensee under this Ordinance to permit the sale, use and/or storage of controlled substances defined in KRS Chapters 218A.050, 070, 090, 110 and 130 with the exception of possession of properly prescribed medications upon the licensed premises. It shall be unlawful for any licensee, except licensed drug stores, to keep or sell or permit to be sold or used on the licensed premises any narcotic or barbiturate drugs. In addition to other penalties set out in this Ordinance for the violation of this section, the City Administrator shall also have the authority to revoke the license issued to said premises.

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

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

(h) It shall be unlawful for any 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 connection with the sale of alcoholic beverages.

(i) No licensee or agent or employee of a licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee permit any drunk or intoxicated person to remain on the licensed premises.

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

(k) As used in this section: "Premises" means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.

- (i) No person under 21 years of age shall enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (ii) No person under 21 years of age shall possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (iii) No person under 21 years of age shall misrepresent his or her age for the purpose of inducing any licensee, or other employee of any licensee, to sell or serve any alcoholic beverages to such person.
- (iv) No person under 21 years of age shall use or attempt to use any false, fraudulent, or altered identification card or paper or any document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.
- (v) It shall be unlawful for any person under the age of twenty-one (21) years to possess in the City of Ashland, Kentucky, any alcoholic beverages outside of the confines of his, or her, abode or residence. Any alcoholic beverages found in possession of such person shall be seized as contraband.
- (vi) (a) Except as provided in KRS 244.090, a licensee, or the licensee's agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless: the usual and customary business of the licensee is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, small farm

winery, distillery, brewery, winery, convenience store, grocery store, drug store, entertainment destination center, licensed APC premises, live music or other entertainment or public facility, or any other business type, as determined by the ABC Board through the promulgation of administrative regulations, whose operations allow it to adequately monitor and prevent alcohol sales to minors.

(b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises.

(vii) (a) Except as provided in subsection (vi) of this section, a licensee or the licensee's agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drug store or similar establishment.

(b) Except as provided in subsection (vi) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drug store or similar establishment.

(viii) Except as provided in subsection (vi) of this section, a person under the age of twenty-one (21) should not remain on any premises that sells alcoholic beverages by the package unless the person under the age of twenty-one (21) is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drug store or similar establishment.

(l) It shall be the duty of every retail licensee to display at all times in a prominent place a printed card at least eight (8) inches by eleven (11) inches in size which shall show, in thirty (30) point or large type, substantially as follows:

WARNING TO MINORS

Persons under the age of twenty-one (21) are subject to a fine of up to Five Hundred (\$500.00) dollars 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.

(m) 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.

(n) Persons at least eighteen (18) years of age may stock, arrange displays, accept payment for and sack malt beverages by the package, under the supervision of an adult. Delivery of malt beverages away from the parking area of the licensed premises shall not be performed by any under the age of twenty (20) years.

(o) No licensee shall knowingly or willfully allow in, upon or about his licensed premises lewd, immoral or obscene entertainment, activities or advertising materials.

(p) No malt beverages shall be sold or purchased for consumption on a premise with a carry-out package license. No malt beverages shall be sold or purchased to be carried out of a premise with a restaurant or hotel/motel by-the-drink license.

SECTION 39. EMPLOYEE PROHIBITIONS.

(a) A person holding a license shall not knowingly employ in connection with the licensed business, any person who:

- (1) has been convicted of any felony within the last two (2) years;
- (2) has twice been convicted of any misdemeanors or offenses directly or indirectly attributable to the use of alcoholic beverages within the last two (2) years;
- (3) Is under the age of twenty (20) years, unless the person is employed:
 - (i) In a bottling house or room of a licensed distiller, winery, brewer or rectifier;
 - (ii) In an office of a wholesaler or manufacturer that is maintained in a building separate from the warehouses or factory;

- (iii) At premises licensed only with a nonquota retail malt beverage package license, and the person employed to sell malt beverages is at least eighteen (18) years of age and under the supervision of a person twenty (20) years of age or older; or
- (iv) In any of the following establishments, if the employment is in a capacity that does not involve the sale or serving of alcoholic beverages:
 - A restaurant that derives at least fifty percent (50%) of its food and alcoholic beverage sales from the sale of good for consumption on the licensed premises; or
 - Any other establishment with alcoholic beverage sales not exceeding fifty percent (50%) of its gross sales;
- (v) Within two (2) years prior to the date of the person's employment, has had any City license issued or any license issued under KRS Chapters 241 to 244 or under any other act or Ordinance relating to the regulation of the manufacture, sale or transportation of alcoholic beverages revoked for cause.
- (v) The provisions of paragraph (1) and (2) shall not apply if the employee's duties do not involve the sale, service, delivery or traffic in alcoholic beverages at the licensed premise.

Violation of this subsection shall subject both employer and employee to penalties provided in this Ordinance and shall be cause for revocation of license.

MISCELLANEOUS

SECTION 40. SALES FROM WHOLESALER'S OR DISTRIBUTOR'S PREMISES.

No purchase or pick up shall be made at a licensed wholesaler's or distributor's premise located within a dry precinct of the city. In further restriction to the prohibitions contained in KRS 243.180 such licensee's transaction, sale and/or delivery of the alcoholic beverage must occur at a licensed premise under Section 7 within a limited sale precinct or to another licensed wholesaler or distributor.

SECTION 41. PENALTIES.

In addition to any administrative action taken for violation of this ordinance, criminal prosecution may be instituted in Boyd District Court alleging a violation which may result in penalties as set out in KRS 534.040.

SECTION 42. SEVERABILITY.

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

SECTION 43. REPEAL

That Ordinance No. 59, Series of 2018, and all amendments thereto, are hereby repealed.

SECTION 44. FORCE AND EFFECT.

This ordinance shall be in full force and effect from and after its adoption, readoption and publication, as required by law.


MAYOR

ATTEST:


CITY CLERK

ADOPTED BY THE BOARD OF COMMISSIONERS: January 14, 2021
READOPTED BY THE BOARD OF COMMISSIONERS: January 28, 2021
PUBLISHED: _____

REQUESTED/SPONSORED BY: JAMES H. MOORE, III, CORPORATION COUNSEL
Alcohol Ordinance presented 01142021