

ORDINANCE NO. 05 - 2023

AN ORDINANCE OF THE CITY OF BERE, KENTUCKY, REPEALING SECTIONS 56.001-56.006 OF THE CODE OF ORDINANCES RELATING TO ALCOHOL SALES, AND PROVIDING FOR THE LICENSED TRAFFIC AND SALE OF ALCOHOLIC LIQUORS AND BEVERAGES WITHIN THE BOUNDARIES OF THE CITY OF BERE, BY ADDING SECTIONS 56.001-56.005, AND SECTION 56.099, TO THE CODE OF ORDINANCES.

WHEREAS, Berea City Code Sections 56.001-56.006 provides for the regulation of the sale of alcohol permitting limited sales of alcoholic beverages in qualified historic sites, qualified golf courses and in certain restaurants and dining facilities seating a minimum of fifty (50) persons and deriving a minimum of seventy percent (70%) of gross receipts from the sale of food; and

WHEREAS, pursuant to KRS Chapter 242.010 *et seq*, a Madison County local option election held on May 16, 2023, and certified by the Madison County Board of Elections on May 18, 2023, Madison County, Kentucky, which encompasses the City of Berea, elected to permit the sale of alcoholic beverages throughout the county; and

WHEREAS, as a result of the local option vote of Madison County referenced above, the City of Berea is now in an area permitting the legal sales of alcoholic beverages within the city limits; and

WHEREAS, it is therefore necessary for the City of Berea to enact comprehensive alcohol sale regulations;

NOW, THEREFORE, the City Council of the City of Berea, Kentucky, does ordain as follows:

SECTION I

That the Code of Ordinances is hereby amended by repealing Sections 56.001-56.006

~~§ 56.001 — PURPOSE~~

~~This article is adopted to regulate the sale of alcohol pursuant to KRS 242.042, KRS 242.1244, KRS 242.123, and KRS 242.1232 in such manner as to effectuate the legislative intent permitting limited sales of alcoholic beverages in qualified historic sites, qualified golf courses and in certain restaurants and dining facilities seating a minimum of fifty (50) persons and deriving a minimum of seventy percent (70%) of gross receipts from the sale of food.~~

~~(Ord. No. 12-2012, passed 8-7-12; Am. Ord. No. 15-2015, § 1, 11-17-15; Am. Ord. 05-2016, passed 3-15-16; Am. Ord. 01-2017, passed 2-21-2017)~~

~~§ 56.002 — APPLICATION REVIEW~~

~~(A) No alcoholic beverage shall be sold in the city, except as authorized under KRS 242.042, KRS 242.1244, KRS 242.123, and KRS 242.1232, and this article. Authorization under this article shall be obtained only upon the city's receipt and approval of an application in accordance with this article, the city's issuance of a license, the receipt and approval of an application by the Kentucky Alcoholic Beverage Control Board (hereafter "ABC") in accordance with applicable law, and the issuance of a license by the ABC.~~

~~(B) Application submittal and review shall be conducted as follows:~~

~~(1) Application and fees.~~

~~(a) Persons requesting approval and a license authorizing the limited sale of alcoholic beverages in qualified historic sites pursuant to KRS 242.1242, qualified golf courses pursuant to KRS 242.123 and KRS 242.1232 or limited sales of alcoholic beverages at restaurants seating a minimum of fifty (50) persons and deriving a minimum of seventy percent (70%) of gross receipts from the sale of food pursuant to KRS 242.1244, and this article shall submit a completed application to be obtained from the Office of the City Administrator. The Office of the City Administrator shall determine the form of this application and the information required by it, which shall be reasonable calculated to permit a reviewing officer to determine compliance with this article, and in the form approved and accepted by the 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.~~

~~(b) Applicants for a license under this article shall pay a license fee of one thousand two hundred dollars (\$1,200) pursuant to the provisions of KRS 243.070 and KRS 243.075.~~

~~(2) Administering officer. The city officer responsible for administering this article shall be the city administrator, or such employee as the mayor shall designate. All transactions required for compliance or enforcement of this article shall be directed to or issued by the city~~

administrator, or the employee designated by the mayor. He or she shall review the applications along with supplemental information and issue licenses authorizing the limited sale of alcoholic beverages at qualified historic sites or limited sales of alcoholic beverages at restaurants seating a minimum of fifty (50) persons and deriving a minimum of seventy percent (70%) of gross receipts from the sale of food pursuant to this article. The city's administrator officer and employees with duties arising under this article shall comply with KRS 241.190.

—(3) *Forms.* All forms reasonably necessary for the implementation of the article shall be provided by the city administrator.

(Ord. No. 12-2012, passed 8-7-12; Am. Ord. No. 15-2015, § 1, 11-17-15; Am. Ord. 05-2016, passed 3-15-16; Am. Ord. 01-2017, passed 2-21-17)

~~§ 56.003—ISSUANCE AND RENEWAL OF LICENSES~~

—(A) *Issuance.* Upon satisfactory compliance with all city imposed requirements, the city's administrating officer shall sign an acknowledgment of that compliance. The ABC shall rely upon that acknowledgment and may review the application for statutory compliance. 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 article shall authorize the limited sale of alcoholic beverages at qualified historic sites, qualified golf courses, or limited sales of alcoholic beverages at restaurants seating a minimum of fifty (50) persons and deriving a minimum of seventy percent (70%) of gross receipts from the sale of food for one (1) year. The license may be renewed annually thereafter upon a showing of compliance with applicable regulations and the payment of a renewal fee of one hundred dollars (\$100.00).

(Ord. No. 12-2012, passed 8-7-12; Am. Ord. No. 15-2015, § 1, 11-17-15; Am. Ord. 05-2016, passed 3-15-16; Am. Ord. 01-2017, passed 2-21-17)

~~§ 56.004—REGULATORY LICENSE FEES~~

—(A) A regulatory license fee is imposed on the gross receipts of sale of alcoholic beverages of each license issued by the city administrating officer under this article, in the amount of six percent (6%).

—(B) Payment of the regulatory license fees shall be remitted to the city administrating official, and shall be made on a return form provided by the city finance office. Such payments and returns are to be made no later than the last day of March, June, September, and December of each calendar year.

—(C) Other than specified herein, the provisions of §§ [60.204](#), [60.208](#), [60.209](#), [60.210](#), [60.211](#), [60.212](#), and [60.299](#) shall be applicable to the payment of the regulatory license fee herein.

(Ord. No. 12-2012, passed 8-7-12)

~~§ 56.005—OPERATIONAL REGULATIONS AND DEFINITIONS~~

~~—(A) *Hours of operation.* No licensee operating pursuant to this article shall be open for business earlier than 6:00 a.m., or later than 12:00 midnight; nor shall any licensee for limited restaurant sales serve any alcoholic beverages on Sunday before 12:00 noon.~~

~~—(B) No licensee for limited restaurant sales may have an "open bar." Any area for serving alcohol must be operated in connection with a restaurant and by the same owner or management. All areas for serving alcohol must be directly connected with a dining room and must be only a service area for patrons of the restaurant. The sale of alcoholic beverages is prohibited except during the time the restaurant is actually engaged in and open to the public for the serving of meals.~~

~~—(C) *Definitions.* For purposes of limited restaurant sales, the following definitions shall apply:~~

~~— "MEAL." The portion of food taken at one time to satisfy appetite. ["Webster's New Collegiate Dictionary," page 712 (1976). *Department of Revenue v. To Your Door Pizza, Inc.*, 670 S.W.2d 482, 484 (Ky. App. 1983)]~~

~~— "OPEN BAR." A bar with unlimited alcohol sales; for example, a facility that sells alcohol without food; or not purchased in conjunction with a meal. Any area on a premises licensed for limited restaurant sales shall only serve alcohol in conjunction with a meal.~~

~~(Ord. No. 12-2012, passed 8-7-12; Am. Ord. No. 15-2015, § 1, 11-17-15; Am. Ord. 05-2016, passed 3-15-16)~~

~~§ 56.006 VIOLATIONS~~

~~—(A) *Fines.* Violations of this article shall be punishable by a fine of up to five hundred dollars (\$500.00) for each offense. Complaints alleging violations of this article may be filed in the Madison District Court and prosecuted as all other municipal ordinance violations. Each day of each violation shall constitute a separate offense.~~

~~—(B) *Administrative action.*~~

~~— (1) Violations of this article shall constitute grounds for administrative action by the city's administrating officer. Upon determination of a violation, the administrating officer may issue a warning and probationary period in which the violation must be 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 one hundred dollars (\$100.00) per day for no more than one-half (½) of the suspension.~~

~~— (2) *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:~~

~~— (a) Reasonable notice of the charge;~~

~~—— (b) Representation;~~

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

~~—— (d) A finding reasonably supported by the evidence.~~

~~—— (3) *Hearing officer.* The city administering 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 designation, the hearing officer's determination shall be in the form of a recommendation upon which the city administering officer shall determine appropriate action.~~

~~—— (4) *Appeal.* Pursuant to KRS 241.200 all orders of the city administering officer may be appealed to the alcoholic beverage control board.~~

~~—— (5) *Referral to ABC.* In lieu of the hearing authority provided above, allegations of violations of this article may be referred to the alcoholic beverage control board for determination.~~

~~(Ord. No. 12-2012, passed 8-7-12)~~

SECTION II

That the Code of Ordinances is hereby amended to enact Sections 56.001-56.005, and Section 56.099, so that such sections shall read as follows:

§ 56.001 SALE OF LIQUORS; PERMITTED SECTIONS.

The licensed traffic in alcoholic liquors shall be permitted within the boundaries of the City of Berea, at such locations within such as are permissible in accordance with the city's zoning codes.

§ 56.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOL. Ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.

ALCOHOLIC BEVERAGE. Alcoholic brandy, whiskey, rum, gin, beer, ale, porter, wine and all other spirituous, vinous, melt or fermented liquors, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing more than 1% of alcohol by volume, which are fit for use for beverage purposes. It does not include:

- (1) Denatured alcohol or denatured rum;

(2) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes;

(3) Patented, patent and proprietary medicines that are unfit for use for beverage purposes;

(4) Toilet, medicinal and antiseptic preparations and solutions that are unfit for use for beverage purposes;

(5) Flavoring extracts and syrups that are unfit for use for beverage purposes;

(6) Vinegar and preserved sweet cider;

(7) Wine for sacramental purposes;

(8) Alcohol, unfit for beverage purposes, that is to be sold for legitimate external use;

(9) Alcohol for mechanical and scientific purposes if unfit for a beverage.

BOARD. The State Alcoholic Beverage Control Board created by KRS 241.030.

BOTTLE. Any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.

BUILDING CONTAINING LICENSED PREMISES. The licensed premises themselves and includes any part of any building in which the premises are contained, and any part of any other building connected with the building by direct access or by a common entrance.

CITY ADMINISTRATOR. The City Alcoholic Beverage Control Administrator.

COMMISSIONER. The Commissioner of Alcoholic Beverage Control.

CONVICTED or **CONVICTION.** A finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgement or the suspension of the judgement.

DEPARTMENT. The Department of Alcoholic Beverage Control.

DISTILLED SPIRITS or **SPIRITS.** Any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted in the definition for "alcoholic beverage," obtained by distilling, mixed with water or other substances in solution, except wine.

DISTRIBUTOR. Any person who distributes malt beverages for the purpose of being sold at retail.

FIELD REPRESENTATIVE. Any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is

assigned, temporarily or permanently, by the Commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes.

LICENSE. Any license issued pursuant to KRS 243.020 to 243.670 and this subchapter.

LICENSEE. Any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670 and this subchapter.

MALT BEVERAGE. Any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under the definition of "alcoholic beverage."

MANUFACTURE. Distill, rectify, brew, bottle and operate a winery.

MANUFACTURER. A vintner, distiller, rectifier or brewer and any other person engaged in the production or bottling of alcoholic beverages.

PREMISES. The land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. It shall not include as a single unit two separate businesses or enterprises of one owner on the same lot or tract of land, in the same or in different buildings.

RECTIFIER. Any person who rectifies, purifies or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters or any other name.

REPACKAGING. The placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.

RETAIL SALE. Any sale where delivery is made in Kentucky to any person not holding a license.

RETAILER. Any person who sells at retail any alcoholic beverage for the sale of which a license is required.

SALE. Any transfer, exchange or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant or employee, of any alcoholic beverage.

SELL. This includes to solicit or receive an order for, to keep or expose for sale, to keep with intent to sell, and the delivery of any alcoholic beverage.

STATE ADMINISTRATOR. The administrator of the distilled spirits unit or the administrator of the malt beverage unit or both, as the context requires.

WAREHOUSE. Any place in which alcoholic beverages are housed or stored.

WHOLESALE SALE. A sale to any person for the purpose of resale.

WHOLESALE. Any person who sells at wholesale any alcoholic beverage for the sale of which a license is required, except a distiller, rectifier, brewer or vintner.

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

§ 56.003 OFFICE OF ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR.

(A) *Office created.* There is hereby created in the city the office of City Alcoholic Beverage Control Administrator.

(B) *Appointment.* The City Alcoholic Beverage Control Administrator shall be appointed by the Mayor with the approval of the City Council.

(C) *Eligibility.* No person is eligible for the office of City Alcoholic Beverage Control Administrator who has himself or herself or a member of his or her immediate family has any interest in any premises or business where alcoholic beverages are manufactured, stored or sold nor shall he or she receive any commission or profit from any person applying for or receiving any license or permit. Membership in any club is not reason for ineligibility for this office.

(D) *Oath and bond.* The City Alcoholic Beverage Control Administrator, before entering upon his or her duties as such, shall take the oath prescribed in § 228 of the Constitution, and shall execute a bond with a good corporate surety in the penal sum of not less than \$1,000 which cost shall be borne by the city.

(E) *Functions of City Alcoholic Beverage Administrator.* The functions of the City Alcoholic Beverage Control Administrator shall be the same with respect to city licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a City Alcohol Control Administrator may be less stringent than the statutes relating to alcoholic beverage control or that the regulations of the board. No regulation of a City Alcohol Control Administrator shall become effective until it has been approved by the City Council and the board.

(F) *Institution of revocation proceeding; notice.* The City Alcoholic Beverage Control Administrator, on his or her own initiative or on the complaint of any person, may institute proceedings, to revoke or suspend any license. Revocation or suspension shall be had only upon five days notice to the licensee, and an opportunity shall be given him or her to be heard.

(G) *Hearings.* All hearings for violation of any city ordinance shall be before the City Alcoholic Beverage Control Administrator and one of the following officials being the Mayor, City Administrator, or Police Chief, at such time and location as may be ordered by the City Alcoholic Beverage Control Administrator. Complaints for violation of

Kentucky state law shall be referred to the Kentucky Alcohol Beverage Control Administrator.

(H) *Appeals.* Appeals from the orders of the City Alcoholic Beverage Control Administrator may be taken to the board, by filing with the board within the time permitted by applicable Kentucky statute a certified copy of the order of the City Administrator. Matters at issue shall be heard by the board as upon an original proceeding. Appeals from order of the City Administrator shall be governed by KRS 243.550 to 243.590.

(I) *Report from administrator.* The City Alcoholic Beverage Control Administrator will make a quarterly report to the Mayor and City Council.

§ 56.004 LICENSES REQUIRED; APPLICATION; REGULATIONS.

(A) *License required.*

(1) No person shall sell, deal or traffic in any of the following without having procured a license as provided by ordinance, or without complying with all statutes, ordinances and regulations applicable hereto.

- (a) Retail dealer of malt beverages, whether by the package or by the drink;
- (b) Distributor of malt beverages;
- (c) Rectifier or blender of distilled spirits or wine;
- (d) Wholesaler of distilled spirits, malt beverages or wines; with premises in the city;
- (e) Retailer of wine or distilled spirits, whether by the package or by the drink;
- (f) Activities for which special temporary licenses are authorized;
- (g) Operation of a private club, as defined in state law which traffics in malt beverages, distilled spirits and wine for consumption on the premises.

(2) Any person violating any of the provisions of division (A) shall be deemed guilty of a Class B misdemeanor. Each sale, each dealing or each trafficking without the required license shall constitute a separate offense.

(B) *Application for license.* Applications for the issuance of new licenses shall be in writing and only upon forms provided by the Department of Alcoholic Beverage Control, Commonwealth of Kentucky. The applicant for a new license shall have caused to be published in a newspaper of general circulation in the city at least once before such application is filed a concise advertisement stating the name and address of the applicant, the name and address of the business, the type of license applied for, and the date by which the application will be made.

(C) *Sworn information to be contained in application.* Application for a license to sell, deal or traffic in alcoholic beverages shall be made in writing, properly subscribed and sworn to before a notary public or other officer authorized to administer an oath.

(D) *Local administrator to approve application upon receipt from the Kentucky Alcohol Beverage Control.* Before being eligible to apply for a state license an applicant's city license for manufacturing, sale or transportation of alcoholic beverages must have been approved by the City Alcoholic Beverage Control Administrator.

(E) *Payment of delinquent taxes prerequisite to issuance.* No license to sell alcoholic beverages shall be granted to any person who is delinquent in the payment of any taxes due to the city at the time of issuing the license; nor shall any license be granted to sell upon any premises or property, owned and occupied by the licensee, upon which there are any delinquent taxes due the city. In such cases, if taxes due the city for any taxing period prior to the date of the application for a license are unpaid and delinquent upon the property or premises upon which a license to sell is sought, the Alcoholic Beverage Administrator may, at his or her discretion, approve a license to sell after receiving from the Finance Director a written statement to the effect that the applicant for the license has paid or has made arrangements with the Finance Director satisfactory to him or her for taking care of the indebtedness represented by the unpaid and delinquent taxes above referred to. This section shall apply only to taxes which are due and payable by the licensee.

(F) *Issuance of city licenses.* Upon the approval of the application, the applicant shall pay the amount of the license fee provided in this subchapter, within the time prescribed in this subchapter to the Finance Department who shall issue the license.

(G) *Persons who may not be licensed.*

(1) A natural person shall not become a licensee under the provisions of this chapter if he or she:

(a) Has been convicted of any felony until five years have passed from the date of conviction, release from custody or incarceration, parole, or termination of probation, whichever is later;

(b) Has been convicted of any misdemeanor described under KRS 218A.050 through KRS 218A.130, inclusive, in the two years immediately preceding the application;

(c) Has been convicted of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages in the two years immediately preceding the application:

(d) Is under the age of 21 years;

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

(f) Is not a citizen of the United States and has not had an actual, bona fide residence in this state for at least one year before the date on which his or her application for a license is made.

(2) A partnership, limited partnership, limited liability company, corporation, or other business entity shall not be licensed if:

(a) Each of the members, directors, principal officers, and managers does not qualify under division (G)(1)(a) through (d) of this section;

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

(c) Any of the members, directors, managers, or principal officers has had any license issued under any statute relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages, revoked for cause or has been convicted of a violation of any such statute, until the expiration of the later of two years from the date of the revocation or two years from the date of conviction.

(H) *Expiration date; renewal of licenses.* All licenses, except special temporary licenses and state multiple license holders issued under this subchapter shall expire on April 30th of each year and the fees thereof shall be due and payable on or before May 1st of each year. State multiple license holders shall be known as "batch" licensees. All batch licenses shall expire on August 31st of each year and the fees thereof shall be due and payable on or before September 1 of each year.

(I) *Special temporary license.* The City Alcoholic Beverage Administrator may, in his or her sound discretion, approve a special temporary retail drink license to any person, such as craft fairs, expositions, or non-profit entities, who are qualified for such a license in accordance with the provisions of KRS 243.260. The fee for such license shall be \$150 for each month or part of month for which the temporary license is issued.

(J) *Special private club license.* A special private club license may be issued to any non-profit social, fraternal, military or political organization or club, which for more than one year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded. This license shall authorize the licensee to exercise the privilege of a distilled spirits and wine retail drink license at the designated premises if the general public is excluded. All restrictions and prohibitions applying to a distilled spirits and wine retail drink license shall apply to a special private club license.

(K) *Transfer of assignment of license without authorization prohibited.* No license issued under KRS 243.020 to 243.670 to any person for any licensed premises shall be transferable or assignable to any other person or to any other premises, unless a transfer or assignment is authorized by the State Administrator in the exercise of his or her sound discretion under KRS 243.640 to 243.650. If this is so approved, a payment of \$50 shall be made to the Finance Director.

(L) *Transfer of license to other premises.* In case of destruction by an act of God, or casualty for which the licensee was not responsible, of premises for which a license under KRS 243.020 to 243.670 has been issued, the State Administrator who issued

the license may, if in his or her discretion such action is necessary to attain justice change the license to authorize continuance of business at other premises. No such transfer shall be made unless the licensee had filed a written verified statement of the reasons for the necessity of transfer. If the transfer is made, the State Administrator shall endorse a description of the new premises upon the license and shall date and sign the endorsement.

(M) Posting of license.

(1) Before commencing or doing any business for the time for which a license has been issued, the license shall be posted and at all times displayed 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. Licenses shall be enclosed in a wood or metal frame enclosing a clear glass space so that the whole license may be seen.

(2) No licensee shall post the license or permit it to be posted, upon premises other than the licensee's 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.

(N) Lost or destroyed licenses. When the license shall be lost or destroyed without fault on the part of the holder of the license or his or her agent or employee, a duplicate in lieu of the original license shall be issued by Finance Director after the Finance Director is satisfied as to the facts; however, the person applying for the duplicate license shall pay a fee of \$50.00 for issuing the duplicate.

(O) Sales only at place specified in license. No license issued pursuant to this subchapter shall authorize the sale of alcoholic beverages of any kind at more than one place, which shall be specified in the license, and a separate license must be taken out for each place in which any alcoholic beverages are proposed to be sold.

(P) Distilled spirits, malt beverage, and wine licenses; kinds; fees. The following kinds of distilled spirits, malt beverages, and wine licenses may be issued, the fees for which shall be:

Distiller's license Class A (>50,000 gal), per annum \$3,000.00

Distiller's license Class B (<50,000 gal), per annum \$1,500.00

Rectifier's license Class A (>50,000 gal), per annum \$3,000.00

Rectifier's license Class B (<50,000 gal), per annum \$1,500.00

Wholesaler's license, per annum \$3,000.00

Quota retail package license, per annum \$1,000.00

Quota retail drink license, per annum \$1,000.00

Special temporary license, per event \$150.00

Nonquota type 1 retail drink license (includes distilled spirits, wine,

and malt beverages), per annum \$2,000.00

Nonquota type 2 retail drink license (includes distilled spirits, wine, and malt beverages), per annum \$1,000.00

Nonquota type 3 retail drink license (includes distilled spirits, wine, and malt beverages), per annum \$300.00

Distilled spirits and wine special temporary auction license, per event \$200.00

Special Sunday retail drink license, per annum \$0.00

Caterer's license, per annum \$800.00

Bottling house or bottling house storage license, per annum \$1,000.00

Malt beverage licenses as follows:

Brewer's license, per annum \$500.00

Microbrewery license, per annum \$500.00

Distributor's license, per annum \$500.00

Nonquota retail malt beverage package license issued to holder of nonquota type 4 retail malt beverage drink license, per annum \$400.00

All other nonquota retail malt beverage package license, per annum \$400.00

Nonquota type 4 retail malt beverage drink license issued to holder of nonquota retail malt beverage package license \$400.00

All other nonquota type 4 retail malt beverage drink license, per annum \$200.00

Malt beverage brew-on-premises license, per annum \$100.00

Limited restaurant license (includes distilled spirits, wine, and malt beverages), per annum \$1,200.00

Limited golf course license (includes distilled spirits, wine, and malt beverages), per annum \$1,200.00

Supplemental bar license (per each supplemental bar issued to same licensee at the same premises, no charge after first five), per annum \$1,000.00

Qualified Historic Site, per annum \$1,000.00

(Q) *Payment of license fee.* The license fee for every license issued under this subchapter shall be payable by the person making application for the license and to whom the license is issued, and no other person shall pay for any license under this

subchapter. A violation of this section shall require the revocation of the license, the fee for which was paid by another and also the revocation of the license, if any, of the person so paying for the license of another.

(R) *Regulatory License Fees.*

(1) Pursuant to KRS 243.075, effective July 18, 2023, a regulatory license fee is imposed on the gross receipts of sale of alcoholic beverages of each license issued by the City Alcoholic Beverage Administrator under this article, in the amount of five percent (5%).

(2) Payment of the regulatory license fees shall be remitted to the City Alcoholic Beverage Administrator, and shall be made on a return form provided by the city finance office. Such payments and returns are to be made no later than the last day of March, June, September, and December of each calendar year.

(S) *Partial license fees; forfeiture; proportional payments in law.*

(1) When a person applies for a license required or authorized by this subchapter after April 30th of any year, he or she shall be charged, if the license is issued, a license fee shall be *pro-rated* by month, including the month in which the license is granted until the following May 1st; except that no license shall be issued for a shorter period than six 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.

(2) The proportionate part of the license fee prescribed shall be paid in advance at the time the application therefore shall be made and the license issued as herein provided for. If any license is revoked or cancelled for any reason by the City Alcoholic Beverage Administrator, the licensee shall forfeit any and all claims which he or she might otherwise have had to any portion of the license fee paid by him or her upon the issuing of the license.

(3) Should any person after obtaining a license to carry on any of the businesses mentioned under this subchapter, be prohibited from conducting such business for the full term of the license because of any changes that may hereafter be made in the laws of the state with reference to intoxicating liquors, then the city shall refund to him or her the proportionate part of the license for the period during which he or she is prevented from carrying on the business.

(T) *Revocation and/or suspension of licenses.* Licenses issued under this subchapter may be revoked or suspended as provided in Section 56.003 of this Code.

(U) *Disposition.* All money derived from the collection of license fees or the forfeiture of bonds, pursuant to this subchapter, shall be paid into and become part of the general fund of the city government.

§ 56.005 OPERATION OF LICENSED ESTABLISHMENTS.

(A) Prohibited retail sales.

(1) No retail licensee shall sell, give away or deliver any alcoholic beverages or procure or permit any alcoholic beverages to be sold, given away or deliver to:

(a) Any person under the age of 21; or

(b) Any person actually or apparently under the influence of alcoholic beverages;
or

(c) A habitual drunkard or any person convicted of drunkenness as many as three times within the most recent 12 month period; or

(d) Any person known to the seller to have been convicted of any misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or of any felony.

(2) Under subdivision (A)(1)(a), it is an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his or her age could not have been ascertained by any other means and that the purchasers appearance and character indicated strongly that he or she was of legal age to purchase alcoholic beverages, such evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.

(B) Persons under the age of 21 not to possess or purchase liquor nor to misrepresent age or use fraudulent identification nor to loiter in barrooms; exceptions.

(1) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LOAF. To spend time in idleness; as to loaf time away.

LOITER. To be slow in moving, delay, linger, saunter, tarry, lag behind; to wander as an idle vagrant; and to waste time.

PREMISES. 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 is situated.

RESTAURANT. An establishment, the principal business of which is the furnishing of meals to the public. The incidental sale of sandwiches and other food items shall not render any licensed premises a "restaurant" within the meaning of this regulation.

(2) *Prohibitions.*

(a) 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.

(b) No person under 21 years of age shall possess for his or her own use, or purchase or attempt to 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.

(c) 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 beverage to such person.

(d) No person under 21 years of age shall use or attempt to use false, fraudulent or altered identification cards or paper or any document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

(e) No person under the age of 21 years shall possess in the city any alcoholic beverage outside of the confines of his or her abode or any residence. Any alcoholic beverages found in possession of such person shall be seized as contraband.

(f) No person under the age of 21 years shall loaf or loiter in or about the barroom of any licensed premises where alcoholic beverages are sold by the drink.

(g) Any person under the age of 21 years remaining in any barroom of any premises licensed to sell alcoholic beverages for the purpose of listening to a radio or for the purpose of listening to and observing a television set, will be considered as loafing and loitering within the meaning of this regulation. The listening to any radio program or the observance and listening to any television program by minors in any premises licensed to sell alcoholic beverages by the drink shall not permit the establishment to be considered as a place where a public exhibition, sport or athletic event is being conducted. Any minor, or minors, entering or remaining in any licensed premises having a bar at which alcoholic beverages are sold by the drink for the purpose of playing pool, and the like, will be considered as loitering or loafing within the meaning of this regulation.

(3) *Exceptions.*

(a) *Limited.* Exceptions are limited to those created by KRS 244.085, KRS 244.087, and KRS 244.090, if applicable.

(b) *Persons under 21.* Persons under the age of 21 years may patronize licensed establishments such as restaurants, grocery stores, drug stores, hotels, private clubs, parks, fairs or public exhibitions where sports or athletic events are scheduled. Bowling is considered an athletic event. During junior league bowling, the sale of alcoholic beverages on licensed premises is prohibited.

(c) *Retail premises to furnish clear view from sidewalk or entrance; hotel or club may serve in separate room.* The entrance doors of any premises for which a retail license has been issued shall be of clear glass. The premises shall be so erected and maintained as to furnish a clear view of the entire premises from the sidewalk, or, if the premises are not on the street level, from the entrance. No partition, box, stall, screen, curtain or other device shall obstruct the view or the general observation of persons, but partitions, subdivisions or panels that are not higher than 48 inches from the floor shall not be construed as obstructing the view or the general observation of persons. Any license to any bona fide hotel or club shall entitle the licensee to serve such alcoholic

beverages as it is licensed to sell in a separate room at banquets or where meals are served.

(d) *Retail premises not to be disorderly.*

1. No person licensed to sell alcoholic beverages at retail shall cause, suffer, or permit the licensed premises to be disorderly.

2. Acts which constitute disorderly premises consist of causing, suffering, or permitting patrons, the licensee, or the licensee's servants, agents, or employees to cause public inconvenience, annoyance or alarm, or wantonly creating a risk through:

- a. Engaging in fighting or in violent, tumultuous or threatening behavior; or
- b. Making unreasonable noise; or
- c. Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or
- d. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- e. Creating a public nuisance; or
- f. Engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor; or
- g. Failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or a local government, or by state administrative regulations, for the licensed premises.

(e) *Security and lighting.* The licensee shall be responsible for maintaining security on his premises including providing adequate lighting to illuminate the sidewalk and all adjacent parking areas 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.

(f) *Business hours.*

1. *Distilled spirits and wine by the drink.* Unless otherwise provided herein, the selling, giving away, or delivering of distilled spirits, wine by the drink, or malt beverages shall not be permitted during the following hours:

- A. Between the hours of 1:00 a.m. and 11:00 a.m. on a Sunday;
- B. Between the hours of 1:00 a.m. and 6:00 a.m. on Monday through Saturday.

2. *Retail package distilled spirits and wine.* The selling, giving away, or delivering of packaged distilled spirits or wine shall not be permitted during the following hours:

- A. Between the hours of 1:00 a.m. and 11:00 a.m. on a Sunday;
- B. Between the hours of 11:00 p.m. on a Sunday and 6:00 a.m. on a Monday, except when Christmas Eve and New Year's Eve fall on a Sunday, then between the hours of 1:00 a.m. and 6:00 a.m. on that Sunday; and
- C. Between the hours of 1:00 a.m. and 6:00 a.m. on any day from Tuesday through Saturday.

3. A premises must obtain the appropriate type(s) of license(s) prior to being able to lawfully sell, give away, or deliver alcohol of any kind pursuant to the relevant licensing provisions of this chapter.

4. If a licensee provides a separate locked department within its licensed remises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and such department is kept locked during the applicable times mentioned above, it shall be deemed to have complied with this section.

5. A. The term **LOCKED DEPARTMENT** shall include all display windows, show cases, shelves, and counters. In no event shall the shelves and counters be left open, but shall have a door affixed thereto, and the storeroom, display windows, show cases, shelves and counters shall be under lock and key. The door may be sliding or affixed with hinges and may be glass, wood, or wire netting of not more than one inch mesh.

B. A separate locked department will be deemed to exist if the licensee uses a register or computerized check-out system that prohibits the sale of alcoholic beverages and the licensee physically conceals or covers all stocks of alcoholic beverages during the times the licensee is not permitted to remain open.

6. A licensee shall not sell, give away, or deliver any alcoholic beverage or permit any alcoholic beverage to be sold, given away, or delivered on the licensed premises during the hours specified above. A licensee shall not permit the consumption of alcoholic beverages on the licensed premises for a period of more than 30 minutes after the hour it is to close for business or to stop selling and delivering alcoholic beverages.

(g) Control of beverages on the licensed premises.

1. *Premises of retail package licensees.* No bottle of distilled spirits or wine shall be opened or consumed on the licensed premises by any person.

2. *Premises of malt beverage licensees and retail drink licensees.* No distilled spirits, vine or malt beverages shall be taken from the licensed premises in an open container.

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

"WARNING TO MINORS

Persons under the age of 21 are subject to a fine up to \$100 if they:

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

(i) *Prizes and premiums.* It shall be unlawful for any licensee under this subchapter 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.

(j) *Gambling; games of chance.* No gambling or games of chance shall be permitted in any form upon such licensed premises. Dice, slot machines, or any device of chance are prohibited and shall not be kept on such premises.

(k) *Controlled substances.* It shall be unlawful for any licensee under this subchapter to sell, to smoke or keep or permit to be sold, smoked or kept upon the licensed premises any marijuana. 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 subchapter for the violation of this section, the City Alcoholic Beverage Control Administrator shall also have the authority to revoke the license issued to said premises.

(l) *Radio receiving apparatus.* It shall be unlawful for any licensee licensed under this subchapter to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from the police radio station as it is now or may hereafter be operated. In addition to other penalties set out in this subchapter for the violation of this section, the radio receiving apparatus shall be confiscated.

(m) *Warning systems.* It shall be unlawful for any license under this subchapter to have or maintain any sound, light or other warning system on such premises which is intentionally adjusted or constructed or which is utilized in such a fashion as to indicate to employees or patrons of the establishment that law enforcement officials are on the premises. This section includes announcements made over the public address systems.

(n) *Permitting possession and consumption of alcoholic beverages on premises.*

1. No person being the owner or occupant or otherwise in possession of any property located within the city knowingly shall allow any person under the age of 21 years to remain on such property while in the possession of intoxicating liquor or beer or while consuming intoxicating liquor or beer.

2. It shall be an affirmative defense under this section if the person charged with the offense, enlisted the aid of and cooperated with law enforcement personnel to

cause minors who are utilizing intoxicating liquor or beer in violation of this section to not remain on his property.

(C) The entrance of any premises for which a retail license has been issued shall be of clear glass and permit an unobstructed view. If the premises are located at street level, the view of the entrance from the sidewalk must be unobstructed, or if the premises are not located at street level, the view from the entrance must be unobstructed. No partition, box, stall, screen, fence, curtain or any other device shall obstruct the view of the entrance or the general observation of persons, nor prohibit ready access to and from the entrance. Any outside areas where alcoholic beverages are served to or consumed by customers or patrons of the licensed premises and outside seating areas of the licensed premises shall be in an area fully under the exclusive control and possession of the licensee and shall be enclosed by such a permanent structure as may be permitted under the ordinances of the city. No such outside areas shall be readily accessible except by means under the exclusive control of the licensee.

§ 56.099 PENALTIES.

(A) (1) Any person violating any section of the previous sections of this Chapter 56 of the Code of Ordinances shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 for each offense, and/or may be imprisoned in the county jail for no more than six (6) months, and each day's possession of a state license or federal permit, contrary to the provisions of this section, shall constitute a separate offense. If a person who violates any provision of section of the previous sections of this Chapter 56 of the Code of Ordinances is a corporation, partnership, joint stock company, association or fiduciary, then the president and/or the principal officer or partner responsible for such violations may be punished by imprisonment as authorized by this section.

(2) *Causes for which licenses may be revoked or suspended.* Any license under KRS 243.020 to 243.670 may be revoked by the City Alcoholic Beverage Control Administrator if the licensee shall have violated any of the provisions of KRS Chapters 241, 243, or 244, or any rule or regulation of the city relating to the regulation of alcoholic beverages, or if any clerk, agent, servant or employee of any licensee shall violate any of the laws, regulations or ordinances relating to alcoholic beverages, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions. A license may be revoked for any of the reasons for which the City Alcoholic Beverage Control Administrator would have been required to refuse a license if the facts had been known.

(3) *Causes for which licenses must be revoked or suspended.* Any license issued hereunder must be revoked or suspended for the following causes:

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

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

(c) Violation of the provisions of KRS 243.670.

(d) If, within a period of two consecutive years, any licensee or any of his or her clerks, servants, agents or employees shall have been convicted of two violations of the terms and provisions of KRS Chapters 241, 243 or 244 or any act heretofore or hereafter in effect relating to the regulations of the manufacture, sale and transportation of alcoholic beverages or if, within such period, any licensee or any of his or her clerks, servants, agents or employees shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of intoxicating liquors, or of one such felony and one such misdemeanor.

(e) Willful and deliberate failure or default of a licensee to pay and excise tax or any part thereof, or any penalties imposed by or under the provisions of any statutes, ordinances or Acts of Congress relative to taxation, or for a violation of any rules or regulations of the Department of Finance made in pursuance thereof.

(f) 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 manufacture, sale and transportation of alcoholic beverages. Any license issued under KRS 243.020 to 243.670 must be revoked or suspended in the case of sale of alcoholic beverages by the licensee at a price in excess of the price set by federal or state regulations.

(g) 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.

(h) Conviction of the licensee, his agents, servants, or employees for:

1. The sale or use upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances;

2. Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances.

(4) *License revocation/suspension.*

(a) At any time after a license has been issued hereunder, the same shall be revoked by the City Alcoholic Beverage Control Administrator, if the alcoholic beverage license issued by the state is revoked.

(b) The Administrator may, in his or her discretion, order a suspension on the license for any cause for which he or she may, but is not required to, revoke the license under the provisions of KRS 243.490, KRS 243.500; provided however, the licensee may have the alternative, subject to the approval of the City Alcoholic Beverage Control Administrator, to pay in lieu of part or all days of any suspension period, a sum as follows:

Wholesale liquor licensees, per day	\$400
Wholesale beer licensees, per day	\$100
Retail drink liquor licensees, per day	\$25
Retail package liquor licensees, per day	\$25
Retail beer licensees, per day	\$25
All remaining licensees, per day	\$25

(c) Payments in lieu of suspension collected by the City Alcoholic Beverage Control Administrator shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.

(d) Appeals from order of suspension and the procedure thereon shall be the same as are proved for above.

(5) *Disposition.* All money derived under the provisions of the above provisions shall be paid into the treasury of the city and become part of the general funds of the city.

SECTION III

All ordinances or parts of ordinances in conflict herewith are repealed. This ordinance shall be published according to law.

FIRST READING: June 20, 2023.

SECOND READING AND ENACTMENT: July 18, 2023.

APPROVED BY:




Bruce Fraley, Mayor

ATTEST:


Clerk of the City Council

Published this 19th day of July, 2023.

PREPARED BY:


Corporation Counsel