

# **CITY OF GRATZ**

**PER OWEN COUNTY ORDINANCE**

## **COUNTY OF OWEN**

# **ALCOHOL BEVERAGE CONTROL ORDINANCE**

**Ordinance #211**

## ORDINANCE NUMBER #211

AN ORDINANCE TO THE COUNTY OF OWEN, KENTUCKY, ADOPTING WITH AMENDMENTS FOUND HEREIN, THE FOLLOWING SET OF REGULATIONS AND REQUIREMENTS FOR ALCOHOL BEVERAGE CONTROL, HEREIN AFTER TO BE KNOWN AS THE COUNTY OF OWEN "ALCOHOLIC BEVERAGE CONTROL ORDINANCE"; AND FURTHER ADOPTING ALL APPLICABLE AND REQUIRED KRS, INCLUDING BUT NOT LIMITED TO, KRS CHAPTERS 241 THROUGH 244 AS RECENTLY UPDATED BY THE GENERAL ASSEMBLY AND ADMINISTRATIVE AGENCIES AND HEREBY REPEALS ORDINANCE 196; AND

WHEREAS, THE COUNTY OF OWEN, IN THE INCORPORATED AREA OF GRATZ, BY AND THROUGH A MAJORITY OF REGISTERED VOTERS, PERMITS THE PRESENCE OF ALCOHOL, MANUFACTURING OF ALCOHOL, AND SALES OF ALCOHOL WITHIN THE CORPORATE LIMITS OF GRATZ WITHIN THE COUNTY OF OWEN AND IN THE UNINCORPORATED AREAS OF OWEN COUNTY WHERE ALCOHOL SALES ARE PERMITTED, SO LONG AS SUCH IS DONE IN ACCORDANCE WITH ALL APPLICABLE LOCAL, STATE, AND FEDERAL LAW; AND

WHEREAS, THE COUNTY OF OWEN THEREFORE HAS ESTABLISHED UNIFORM REGULATIONS AND REQUIREMENTS FOR THE LICENSING AND REGULATION OF ALCOHOLIC BEVERAGES, MANUFACTURING, AND SALES PURSUANT TO AUTHORIZATION UNDER KRS CHAPTERS 241 THROUGH 244, AND ALL OTHER APPLICABLE LAW;

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF OWEN COUNTY, KENTUCKY, THAT THE FOLLOWING REGULATIONS AND REQUIREMENTS ARE HEREBY ADOPTED AS SET FORTH BELOW:

### ARTICLE I. GENERAL

- A. This Ordinance shall be known as the "Alcoholic Beverage Control Ordinance" of the County of OWEN, Kentucky (hereinafter referred to as the "County").
- B. The purpose of this Ordinance is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage manufacture and sales pursuant to authorization under KRS Ch. 241 through 244.
- C. The definitions of the words used throughout this chapter, unless the context requires otherwise, shall have the same meaning as those set out in the alcoholic beverage control laws (KRS Ch. 241 through 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.
- D. This Ordinance shall be construed to apply to the manufacture and traffic in both malt beverages and distilled spirits and wine where the context permits such application. Nothing in this chapter shall excuse or relieve the licensee, or the owner, proprietor, employee, agent or person in charge of any licensed premises where alcoholic beverages are sold from the restrictions, requirements and penalties of any other ordinance of the county, or of any statutes of the state relating to violations pertaining to alcoholic beverages.

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

## ARTICLE II. LICENSE REQUIREMENTS

### A. County Licenses:

For the privilege of causing, permitting and engaging in the actions, business, and transactions authorized thereby in regard to traffic in alcoholic beverages in the County and pursuant to the authority of KRS 243.060, there is hereby established a corresponding County License for each of the state licenses described in KRS 243.060. The fee for each County license shall be as set out in the schedule set forth below. In the event KRS 243.060 shall hereafter be amended to authorize additional County Licenses, the fee for each County License shall be as follows:

1.	Quota Retail Package License, per annum	\$500.00
2.	Quota Retail Drink License, per annum	N/A
3.	Non-quota Type 2 Retail Drink License, per annum (includes distilled spirits, wine and malt beverages)	\$500.00
4.	Non-quota Type 3 Retail Drink License, per annum (includes distilled spirits, wine and malt beverages)	\$150.00
5.	Special Temporary License, per event	\$100.00
6.	Special Sunday Retail Drink License, per annum	\$150.00
7.	Non-quota Retail Malt Beverage Package License, per annum	\$200.00
8.	Non-quota Type 4 Retail Malt Beverage Drink License, per annum	\$200.00
9.	Limited Restaurant License, per annum (includes distilled spirits, wine, and malt beverages)	\$700.00
10.	Limited Golf Course License, per annum (includes distilled spirits, wine, and malt beverages)	\$700.00

B. The fee for each of the first five (5) supplemental bar licenses shall be the same as the fee for the primary drink license. There shall be no charge for each supplemental license issued in excess of five (5) to the same licensee at the same premises.

C. The holder of a Non-Quota Retail Malt Beverage Package License may obtain a Non-quota Type 4 Malt Beverage Drink License for a fee of fifty dollars (\$50). The holder of a Non-quota Type 4 Malt Beverage Drink License may obtain a Non-Quota Retail Malt Beverage Package License for a fee of fifty dollars (\$50).

**D. Certain Special Licenses defined:**

**(1) Limited Restaurant License**

A Limited Restaurant License may be issued pursuant to KRS Chapter 243, if said restaurant meets the definition of a "Limited Restaurant" as set forth in KRS 241.010 (31). A Limited Restaurant is a facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, and which maintains seating capacity of either one hundred (100) or fifty (50) persons for dining. If the Limited Restaurant only maintains seating capacity for fifty (50) persons, it shall not have open bar and all alcoholic beverages shall be sold in conjunction with the sale of a meal. Distilled spirits, wine, and malt beverages shall be deemed to be purchased in conjunction with a meal if the distilled spirits, wine, and malt beverages are served after the meal is ordered and no more than one-half (1/2) hour after the meal is completed.

**(2) Limited Golf Course License**

A Limited Golf Course License may be issued pursuant to KRS Chapter 243 if an establishment meets the following conditions: a golf course with nine (9) or eighteen (18), holes that meets United States Golf Association criteria as a regulation golf course. A Limited Golf Course License shall authorize the licensee to purchase, receive, possess, and sell distilled spirits, wine, and malt beverages at retail by the drink for consumption on the licensed premise.

**(3) Non-quota Type 1 Retail Drink License**

A Non-quota Retail Drink License may be issued to, and in the, following as defined by KRS to: a Convention Center or a Convention Hotel Complex; a Horse Racetrack; an Automobile Racetrack, a Railroad System; a Commercial Airlines System or Charter Flight System, a Qualified Historic Site, State Park.

**(4) Non-quota Type 2 Retail Drink License**

A Non-quota Retail Drink License may be issued pursuant to and as defined by KRS to the following: (a) a Hotel that contains at least fifty (50) sleeping units, contains minimum dining seating for at least fifty (50) persons, and which maintains fifty percent (50%) of its gross food and drinks sales are from the sale of food; (b) a restaurant that contains minimum dining seating for at least fifty (50) persons, and which maintains fifty percent (50%) of its gross food and drinks sales are from the sale of food; (c) an Airport; or (d) a Riverboat.

**(5) Non-quota Type 3 Retail Drink License**

A Non-quota 3 Retail Drink License may be issued pursuant to and defined by KRS to the following: (a) a Private Club in existence for longer than one (1) year prior to the license application and which excludes the general public; (b) a Dining Car, (c) a Distiller, and (4) a Bed and Breakfast.

**(6) Non-quota Type 4 Retail Malt Beverage Drink License**

A Non-quota Type 4 Retail Malt Beverage Drink License may be issued pursuant to and as defined in KRS to the following: a holder of a quota retail drink license; a holder of a microbrewery license; a holder of a small farm winery license; and any other business wishing to sell malt beverages by the drink for

consumption on the premises only. A Non-quota Retail Malt Beverage Drink License shall not be issued to any premises from which gasoline and lubricating oil are sold, or from which the servicing and repair of motor vehicles is conducted, *unless* there is maintained in inventory for sale on the premises at retail not less than five thousand dollars (\$5,000) of food, groceries, and related products valued at cost.

(7) Special Temporary License

A Special Temporary License may be issued only as set forth in KRS 243.260 and 804 KAR 4:250. Such a license may be issued to any regularly organized fair, exposition, racing association, organized civic or community-sponsored event, or charitable event as defined by applicable law. This license shall authorize the licensee to exercise the privileges of a Quota Retail Drink Licensee *and* a Non-quota Type 4 Malt Beverage Drink Licensee at designated premises for a specified and limited time, which shall not exceed thirty (30) days and which shall expire when the qualifying event ends. All restrictions and prohibitions applying to a distilled spirits and wine Quota Retail Drink License or a Non-quota Retail Malt Beverage Drink License shall apply also to a Special Temporary Licensee as described in this section.

The Owen County Fiscal Court, pursuant to KRS 243.072, finds that an economic hardship exists, and that it would aid economic growth and provide community activities encouraging business opportunities if distilled spirit and wine sales by the drink were available as part of a special event license.

E. Expiration of License; Proration of Fees

All County Licenses, except temporary licenses, shall begin on February 1 of any year and shall expire on January 31 of the following year as set forth in KRS 243.090 and 804 KAR 4:390. Any licenses issued after February 1 of any year shall be assessed a fee which is based on the pro rata portion of the remainder of the license period; however, the cost of any license shall not be less than one-half (1/2) the amount of the full fee for an annual license of that type.

F. Payment of License Fees; Delinquency

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

G. Refund of Fees

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

(2) In the event a violation of this Ordinance occurs that results in the suspension or revocation of the license, the county shall not be required to refund any portion of the license fee.

**H. Disposition of Fees and any other type of payment to the County:**

The County ABC Administrator shall transmit all fees and any other types of payment made to the County, upon collection, to the County Clerk, or his/her designee, for deposit into the appropriate designated account.

**ARTICLE III. COUNTY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR**

**A. Alcoholic Beverage Control Administrator**

(1) Pursuant to KRS 241.110, there is hereby created the duties of the County of OWEN Alcoholic Beverage Control Administrator.

(2) The County Judge Executive shall serve as the County Alcoholic Beverage Control Administrator (hereinafter referred to as "County ABC Administrator"), unless the Owen County Judge Executive shall appoint someone else to fill the position pursuant to KRS 241.110.

(3) The County Alcohol Beverage Administrator may from time to time appoint such additional personnel, such as Alcohol Beverage Control Investigator(s), as is necessary to assist him or her in the administration of this Ordinance.

(4) The functions of the County ABC Administrator shall be the same with respect to the County Licenses and regulations as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky (hereinafter referred to as "ABC Board") with respect to state licenses and regulations.

(5) To prevent potential conflicts of interests, no person shall be a County ABC Administrator, an investigator, or an employee of the County, under the supervision of the County ABC Administrator, who would be disqualified to be a member of the ABC Board under state law set forth in KRS 241.100.

(6) The County ABC Administrator shall have authority delegated by the Fiscal Court, and as authorized under KRS Ch. 241 through 244. The County ABC Administrator, along with any designated investigator(s), shall have full police powers of law enforcement, and their jurisdiction shall be, the County. The County ABC Administrator shall have jurisdiction over only that portion of the county which lies outside the corporate limits of any city that has appointed its own city ABC administrator. The County ABC Administrator and his investigators may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant.

(7) The County ABC Administrator and his investigators shall have available at all reasonable times for their inspection all books and records required to be maintained by licenses under KRS 244.150 and the County ABC Administrator shall receive copies of all reports submitted by licensee to the State Alcoholic Beverage Control Board.

(8) The County ABC Administrator, before entering upon his or her duties, shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00). Any employee delegated or assigned to the ABC Administration may also be asked to execute a similar bond in such penal sum as the County deems

necessary unless said person is already covered under the County's active bonds as required under KRS in regards to officials and employees of the County.

(9) The salary of the office of County ABC Administrator, if any, together with the salaries of any other personnel assisting the County ABC Administrator shall be fixed from time to time by Fiscal Court.

## **B. Appeals**

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

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

## **ARTICLE IV. APPLICATION AND MATINENANCE OF LICENSE**

### **A. Advertisement**

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

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

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

### **B. Form of Application**

(1) All licenses granted under this chapter shall be approved by the County ABC 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 Kentucky ABC Board and/or the County, both of which may be amended and supplemented from time to time by each respective agency.

(2) The application shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought, as required by the Kentucky Revised Statutes, the state ABC Board, and the County, including as follows:

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

(3) Each application shall be accompanied by a certified check, cashier check, or money order for the amount of the license fee, less the fifty dollars (\$50.00) application fee.

(4) In addition to the above specified information, the applicant shall file, with the application, responses to any additional questions as may be posed or prescribed by the County ABC Administrator. The County Fiscal Court has adopted a statement of guidelines and priorities for the issuance of licenses within this Ordinance to determine the extent to which applications may further, or impede, the objectives of those guidelines. Therefore, in addition to the information contained in the application, the County ABC Administrator may require such other information as the Administrator may, in his or her discretion, deem desirable, reasonable, or appropriate to the consideration of the application.

### **C. Other Conditions**

In addition to any other inquiries, conditions or considerations required or permitted by law:

(1) The County ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until the applicant and his or her place of business shall have been approved by a licensed building inspector, and any and all other inspections required by the Kentucky Building Code or other applicable law;

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

(3) No license to sell alcoholic or malt beverages may be granted or renewed to any person who is delinquent in the payment of any property taxes, both real and personal, any other taxes due to the County, fees of any type, or charges due to any department of the county at the time of issuing the license, nor may any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any of the above delinquent payments due and owing to the County. Further, if a licensee becomes delinquent in the payment of any of the above at any time during the license period, the license to sell alcoholic or malt beverages may be subject to revocation or suspension.

(4) No person, whether applicant for license, or a licensee, shall in any manner attempt to bribe, threaten, unduly influence or intimidate the County ABC Administrator, or any member of the County ABC Administrator's staff, or any state ABC Administrator or staff, in any matter in which an application or proposed application for license, or procedure for revocation or suspension is pending before such officer. This division is not intended to stifle expressions of opinion; however, it is intended to make clear that the ABC Administrators are public officials charged with the administration and enforcement of the law, both local and state. Any person applying for a license, or contesting the revocation or suspension of a license, who engages in attempted bribes, threats, attempted undue influence or intimidation of a county or state ABC Administrator or staff shall be disqualified from receiving or retaining a license, in addition to other penalties as provided by law. The procedures for appeals shall apply to disqualifications, revocations or suspensions under this Ordinance. Nothing in this Ordinance shall be interpreted to prohibit monetary settlements in lieu of revocation or suspension of license after a final order or revocation or suspension, where the Ordinance and applicable statutes allow for such payments in settlement.

#### **D. Form of License**

All County Licenses shall be in such form as may be provided by the County ABC Administrator, but at the least shall contain:

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

#### **E. Change of Information**

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

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

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

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

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

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

#### **F. Renewal of License**

(1) Every year, except in the case of the temporary licenses, each licensee shall renew its license. All renewal licenses must be on file with the County ABC Administrator no less than thirty (30) days prior to the expiration of the license for the preceding license period or the same shall be canceled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license period as a result of construction, act of God, casualty, death, the acquisition or threatened acquisition of the premises by any federal, state, county or other governmental agency or private organization possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; provided that said licensee shall file a written verified statement no less than twenty (20) days from the expiration date of the license, setting forth these facts, and the County ABC 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 County ABC 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.

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

#### **G. Lost or Destroyed License.**

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

#### **H. Revocation or Suspension.**

(1) Any license may be revoked or suspended by the County ABC Administrator if the licensee shall have violated any of other provisions of KRS Ch. 241 to 244, or any rule or regulation of the ABC

Board, or of the Kentucky Department of Revenue, relating to the regulation of the manufacture, sale, and transportation, or taxation, of alcoholic beverages or if such licensee shall have violated or shall violate any act of Congress or any rule or regulation of any federal board, agency or commission, or this Ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale, and transportation, or taxation, of intoxicating liquors, or any rules or regulations of the county heretofore in existence or authorized by the terms of KRS Ch. 241 to 244 to be created, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed is disobedience of his or her instructions, or any such license may be revoked or suspended for any cause which the County ABC Administrator in the exercise of his or her sound discretion deems sufficient.

(2) A license may be revoked for any of the reasons for which the County ABC Administrator would have been required to refuse a license if the facts had been known.

(3) In addition to the foregoing stated causes, any license may be revoked or suspended for the following causes:

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

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

(e) 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.

## **I. Proceedings for Revocation or Suspension of License**

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

(2) A decision of the County ABC Administrator revoking or suspending a license may be appealed as provided in KRS 241.140 and Article III.

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

(4) When a license has been revoked or suspended, the former licensee may, with prior approval of the County ABC Administrator, dispose of and transfer his or her stock of alcoholic beverages to an appropriate entity.

(5) Appeal from the decision of the County ABC Administrator revoking or suspending a license shall be to the ABC Board. The timely filing of an appeal shall stay further proceedings for revocation or suspension.

(6) If a license is revoked or suspended by an order of the County ABC Administrator, and the decision is not appealed, the licensee shall suspend all operations authorized under his or her license upon effective date of the order. Upon the entry of a final order of the ABC Board sustaining or ordering revocation or suspension on appeal, the licensee shall at suspend all operations authorized under this license upon effective date of the order.

#### **J. Transfer or Assignment**

No license issued under this chapter shall be transferred or assigned either as to licensee or location except with prior approval of the County ABC Administrator.

#### **K. Refusal of License**

(1) The County ABC Administrator may refuse to issue a license for any of the following reasons:

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

(b) If the applicant has done any act for which a revocation of license would be authorized under local, state, or federal law; or

(c) If the applicant has made any false material statement in his or her application.

(2) An applicant who has been refused a license by the County ABC Administrator may appeal the refusal to the ABC Board pursuant to KRS 241.140 and Article III.

#### **L. Review of License; Books, Records and Reports**

(1) Applicants to whom a license is issued pursuant to this chapter shall provide periodic information demonstrating compliance with the conditions of any license, such as, but not limited to, the continuing requirement that a minimum percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly regulatory fee filings. The County shall provide the form schedule to the licensee. The licensee's acceptance of a license to manufacture or traffic in alcoholic beverages shall constitute consent to the filing of the quarterly report. In the case of caterer filing, the quarterly report shall identify each catered event by type of event, date and address of the event, and shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales during the reporting period. This requirement for filing of reports notwithstanding, the county may at any time come upon the premises of any licensee and examine the books and records to determine whether the licensee is in compliance with all parts of this chapter. In the event the conditions of any license requirement are not met during any particular quarter, the County ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the County ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the food sale percentage requirement has been met.

(2) 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 County ABC Administrator and such County employees who may assist the County ABC Administrator in his or her review.

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

#### **M. Dormancy**

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

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

(3) The provisions of subsection (2) hereof shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain, whether acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. Prior to the expiration of ninety (90) days of inactivity, such licensee shall furnish to the County ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business, for any of the specific reasons set forth herein, and the County ABC 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 County ABC Administrator. Such extension may not extend beyond the renewal date but may be for such times as the County ABC Administrator deems appropriate in exercise of his or her sound discretion.

## **ARTICLE V. HOURS FOR SALE AND DELIVERY**

### **A. Hours for Sale and Delivery**

(1) A licensee for distilled spirits, wine and/or malt beverages shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 6:00 a.m. until 12:00 a.m. (midnight) Monday – Saturday.

(2) A licensee for distilled spirits, wine and/or malt beverages shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages on Sunday after the hours of 1:00 p.m to 10:00 p.m. Licensees must obtain a Sunday retail drink license in order to sell distilled spirits or wine by the drink on Sunday.

(3) All delivery on distilled spirits, wine and/or malt beverages in the County shall be made during normal business hours, Monday through Saturday. No delivery shall occur on Sunday.

(4) The licensee shall be permitted according to KRS 244.290 to sell or dispense any distilled spirits, wine and/or malt beverages during the hours the polls are open on any regular or primary election day.

(5) A licensee may sell and dispense distilled spirits, wine, and/or malt beverages on New Year's Eve until 1:00 a.m. on January 1, regardless of the day of the week on which New Year's Eve occurs; provided that, the appropriate licenses have been obtained from both the County and the State ABC Board. If New Year's Eve falls on a Sunday, distilled spirits, wine and/or malt beverages may be sold and dispensed commencing at 1:00 p.m., if New Year's Day falls on a Sunday, then distilled spirits, wine and/or malt beverages may be sold and dispensed until 1:00 a.m. on January 1.

## **ARTICLE VI. CONDITIONS, PROHIBITIONS AND RESTRICTIONS**

### **A. Gambling**

No gambling or game of chance unless otherwise authorized by the Commonwealth of Kentucky shall be permitted in any form on such licensed premises unless permitted by KRS 243.505. Dice, slot machines, quarter pushers, prize redemption machines with programmable payouts, or any device of chance is prohibited and shall not be kept on such premises.

### **B. Radio Receiving Apparatus**

It shall be unlawful for any licensee licensed under this Ordinance to have, or maintain, any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from any law enforcement agency in Owen County as it is now, or may hereafter be operated. In addition to other

penalties provided for the violation of this section, the Owen County Sherriff or the County ABC Administrator, or his or her designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

**C. Security**

The licensee shall be responsible for maintaining security on his or her 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.

**D. Prizes and Premiums Prohibited**

It shall be unlawful for a licensee to give away, or offer to give away, anything tangible of value as a premium or prize, or for any other purpose in direct connection with the sale of malt beverages unless permitted by KRS 244.500.

**E. Treating Prohibited**

It shall be unlawful for the licensee under this Ordinance to give away any alcoholic beverage in any quantity for free or for less than a full monetary consideration unless the licensee holds a sampling license, the licensee's license type permits limited free samples (i.e., small farm winery, microbrewery, brewer's) or products are sampled at educational event authorized by 804 KAR 1:110 and 804 KAR 11:030.

**F. Drunkenness**

No licensee or agent or employee of the licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee sell alcoholic beverages to any person who is actually or apparently under the influence of alcoholic beverages, or known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period. No licensee shall permit any person who is actually or apparently under the influence of alcoholic beverages to remain on the licensed premises. As used herein, whether a person is actually or apparently under the influence of alcoholic beverages shall be determined by the licensee or server with specific reference to the principles and guidelines established in mandatory alcohol server training as to the signs of alcohol intoxication.

**G. Underage Sales**

The licensee shall not sell or dispense alcoholic beverages to any person who is under 21 years of age.

**H. Sign Requirements-Notice to Persons under the Age of Twenty-One (21)**

The licensee shall display at all times in a prominent place a sign at least 8" x 11" in thirty (30) point or larger type font which states as follows:

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

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

#### **I. License to be Displayed**

(1) Pursuant to the requirements set forth in KRS 243.895, the Licensee, before commencing any business for which a license has been issued, shall post and display at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

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

#### **J. Legal Transactions for Wholesalers, Distributors and Retail**

No wholesaler or distributor shall sell any alcoholic beverages to any person in the county for any consideration except under cash terms of the wholesaler or distributor at or before the time of delivery. A wholesaler is also permitted to extend credit for 30 days to a retailer for the purchase of distilled spirits and wine. No retail licensee shall sell to a consumer for any consideration except for cash or case equivalent at time of purchase.

#### **K. Employment Restrictions**

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

- (1) Has been convicted of any felony within the last two (2) years unless permitted by KRS 244.090(2);
- (2) Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years unless permitted by KRS 244.090(2);
- (3) Is under the age of twenty (20) years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined under state statute, unless said person is exempt or permitted by KRS 244.090 or KRS 244.087;

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

**L. Lavatory Facilities Required**

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

**M. Nudity and Adult Entertainment Activities Prohibited**

No licensee shall offer or permit nudity, adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premise. 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. No licensee shall sponsor, offer or permit drinking contests, all-you-can-drink specials or free drinks on any licensed premise in the County.

**N. Cause for Revocation**

Violation of this and any other Article shall subject the licensee to penalties provided in this Ordinance and shall be cause for revocation or suspension of County Licenses.

**ARTICLE VII. MINORS**

**A.** No person under the age of 21 may possess alcoholic beverages or enter onto any licensed premises for the purpose of acquiring alcoholic beverages.

**B.** As provided in KRS 244.085, no person under the age of 21, except in the company of a parent or guardian, may enter any premises licensed for the package sale of alcoholic beverages. No person under the age of 21, may enter any premises licensed for drink sales of alcoholic beverages unless permitted by KRS 244.085(6). For purposes of this prohibition, "premises" specifically encompasses the entire lot upon which a licensed establishment is situated, including any drive-up window. The prohibitions contained in this Subsection shall not apply to premises where the usual and customary business of the establishment is a gas station, convenience store, grocery store, drugstore, or similar establishment.

**C.** No person shall knowingly permit, aid, assist, induce, cause or otherwise encourage any minor to be in possession of, use or consume alcoholic beverages. All licenses, as set out in this Ordinance, shall require proof of age of all persons attempting to purchase or consume alcoholic beverages on the licensee's premises.

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

**E.** It shall be a defense to any prosecution under this section if the person charged, upon discovery of said minor individuals, manifests a proper effort to enlist the aid of and cooperate with law enforcement

personnel in stopping the minor individuals' possession, consumption or use of alcoholic beverages, or that the minor individuals' possession of alcoholic beverages was exempted by KRS 244.090 or KRS 244.087.

## ARTICLE VIII. CONSUMPTION AT PREMISES PROHIBITED

### A. Consumption at Package Store Prohibited.

(1) No licensee of a package store, whether trafficking in distilled spirits, wine or malt beverages, shall permit consumption of alcoholic beverages on the premises unless it also holds the appropriate drink license. The licensee shall post a prominent notice on the premises stating that consumption of alcoholic beverages on premises is prohibited.

(2) This restriction regarding on premises consumption shall not prohibit sampling as allowed for microbreweries, breweries, and small farm wineries as permitted by provisions in KRS Chapter 243, or where sampling is permitted for a retail distilled spirits and wine licensee under the provisions of KRS 244.050, or beer tastings as permitted in 804 KAR 1:110 and 804 KAR 11:030.

### B. Habitual Congregating

(1) Definitions. In addition to the definitions contained in KRS Chapters 241-244, as used in this Article, the following terms are defined as follows:

(a) *Habitual* shall mean consistent, that is, by frequent practice or use, but not necessarily constant or exclusive;

(b) *Package Liquor Store* shall mean a retail establishment selling distilled spirits, wine and malt beverages in package containers pursuant to licenses issued for those purposes;

(c) *Public Nuisance* shall mean any activity that endangers or interferes with the general use and enjoyment of neighboring property, passers-by or the health, safety and welfare of the public; and

(d) *Vacant Property* shall mean a vacant lot on which no building or other structure exists or property on which any structure is unoccupied or unused, or which otherwise reflects abandonment by the owner or person with the right of occupancy.

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

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

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

## **ARTICLE IX. ENFORCEMENT**

### **A. Enforcement**

The Owen County Sheriff Department officers and the County ABC Administrator and his/her Investigator(s) are hereby authorized to enforce this Ordinance in full.

## **ARTICLE X. PENALTIES**

### **A. Penalties**

(1) In addition to any criminal prosecution instituted in Owen District Court against an alleged violator, the County ABC Administrator may assess civil fines in lieu of suspension as authorized in KRS 243.480, including the per diem assessments for ongoing violations. Payment of all fines shall be remitted to the County ABC Administrator, who shall then transmit the fines to the County Clerk for deposit in the appropriate designated account.

(2) Any person, firm or corporation who violates any of the provisions of this chapter, for which no other penalty is hereby provided, shall be guilty of a Misdemeanor, and subject to prosecution in the OWEN County Court System, as follows: be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or imprisoned for not more than six months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, LLC, joint stock company, association or other business organization, or a fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

## **ARTICLE XI. MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING**

### **A. Mandatory Responsible Beverage Service Training**

(1) All persons employed in the selling *and/or* serving of alcoholic beverages shall participate in and complete the Department of Alcoholic Beverage Control's STAR program or other Responsible Beverage Serving ("RBS") program approved by the Department.

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

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

(4) All persons completing the training required by this section shall be re-certified not less than once every three (3) years thereafter.

## **ARTICLE XII. SIGNS AND ADVERTISING.**

- A.** All signage shall be in compliance with any and all other existing rules, regulations, and Ordinances of the County of Owen, including but not limited to, the Planning and Zoning Ordinance as currently enacted, and/or as may be amended in the future.
- B.** No flashing lights shall be used to illuminate the exterior of any premises licensed under this Ordinance.
- C.** Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130 and regulations promulgated thereunder.
- D.** No licensee shall publish or display advertising that is false or misleading, nor shall any licensee publish or display advertising that implies that consumption of alcoholic beverages is fashionable or the accepted course of behavior, or advertising that contains any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, whether or not any known athlete is depicted or referred to, nor shall any licensee publish or display advertising that encourages intoxication by referring to the intoxicating effects of alcohol (or the use of terms such as “high test”, “high proof” or “extra strong”) or depicting activities that tend to encourage excessive consumption.
- E.** Any off premises signage advertising the sale of alcoholic beverages is prohibited.
- F.** Temporary signs and/or banners not to exceed 4 feet by 8 feet may be displayed two (2) weeks prior to a special event.
- G.** It shall be unlawful for a licensee under this chapter to distribute or cause to be distributed any handbills, circulars, or cards as a medium of advertising alcoholic beverages.
- H.** No licensee shall advertise alcoholic beverages on any municipally owned property or at any municipally sponsored event.
- I.** No license shall advertise distilled spirits, wine and/or malt beverages by trade name, trade-mark or in any other manner within one hundred feet (100') of the property line of any school daycare, nursery or church. This distance shall be a straight line. The County ABC Administrator has the right to waive this prohibition.
- J.** Window signs, either temporary or permanent, shall not exceed 50 percent of each window area. State ABC mandated licenses and notices are excluded from the 50 percent calculation.

### **ARTICLE XIII. PATIO AND OUTDOOR SALES**

#### **A. Patio and Outdoor Sales Regulations**

(1) Patio and outdoor sales of alcoholic beverages shall be permitted only on premises licensed for sales of alcoholic beverages by the drink.

(2) No licensee shall offer alcoholic beverages for sale in a patio or outdoor area of the licensee's premises except in a clearly defined patio or outdoor area that is enclosed by a fence or other screening, not less than three (3) feet in height. All outdoor areas and screening shall be subject to the approval of the County ABC Administrator. An exception to this restriction may be granted for seasonal sidewalk cafes, upon application to and authorization from the County ABC Administrator. The permission

to operate a sidewalk café shall be governed by the provisions of this article and shall be subject to the regulation of local zoning authorities as well as codes enforcement and public safety officers.

(3) No licensee shall offer patio or outdoor sales of alcoholic beverages unless the patio or outdoor area and fencing or screening area shall have been approved in advance by the County ABC Administrator.

(4) Unless exempted by the following provisions of this Ordinance, and by permission of the County ABC Administrator, patio areas must comply with the screening requirements of this Ordinance. Sidewalk café seating areas must comply with this Ordinance and with local zoning laws and other public safety requirements noted in this Ordinance, or in other local ordinances, statutes or regulations.

**B. Exception(s) to Screening Requirements for Outdoor Sales and Service of Alcoholic Beverages, Specifically, Permitted Sidewalk Cafes in the Downtown Business Area.**

(1) Licensees in the downtown business district/area of a city with a County ABC Administrator may request an exception from the outdoor screening of patio provision in order to permit seasonal sidewalk cafes that serve food and alcoholic beverages as an adjunct to the primary and adjacent licensed premises. In the case of permitted sidewalk cafes, they shall be deemed part of the licensed premises.

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

**C. Conditions for Sidewalk Café Permit**

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

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

(2) No tables, chairs or any other furnishings, except plant tubs, shall be placed in the area used for the sidewalk café during any period when the sidewalk café is not open and being operated. They shall be removed at the end of each business day at the hour specified in the permit. Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved Permit. While such café is in operation, all tables and chairs shall be kept in a clean, sanitary condition.

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

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

(5) No disposable cups or drinking vessels may be used and the licensee shall not permit any alcoholic beverages to be taken off premises by patrons, customers or guests.

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

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

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

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

#### **D. Other Requirements Applicable to Sidewalk Cafes**

No sidewalk café permit shall be effective unless the licensee has filed with the County ABC Administrator evidence of insurance, insuring the licensee against liability imposed by law arising out of the ownership, maintenance or operation of such sidewalk café. The insurance shall be amount of coverage that is a minimum of \$500,000.00 per person for bodily injury, and a minimum of \$1,000,000.00 per occurrence for property damage. The County shall be named an additional insured in the policy required. Such insurance policy shall further provide expressly that it may not be canceled except upon ten (10) day's written notice (or more) filed with the County ABC Administrator.

### **ARTICLE XIV. IMPLEMENTATION OF ORDINANCE PROVISIONS; SEVERABILITY**

#### **A. Implementation of Changes in Ordinance Provisions**

The Owen County Fiscal Court may promulgate rules and regulations, and/or amendments thereto, as is in its discretion in order to ensure the proper implementation of this Ordinance. Such will be done as according to local, state, and federal law.

#### **B. Severability**

If any section of this Ordinance, including but not limited to, any section, subsection, paragraph, sentence, clause, phrase, or any other portion of this Ordinance, is declared illegal or unconstitutional, or otherwise invalid by a Court of competent jurisdiction, such declaration shall not affect the remaining portions hereof.

#### **C. Effective Date of Ordinance Provisions**

The Ordinance shall take effect immediately after its Passage and Publications as required by law.

#### **EFFECTIVE DATE**

Upon introduction and second and given First Reading by the Owen Fiscal Court on this the 14th day of February, 2017.

Published in the Owen County News Herald on the 15<sup>th</sup> day of February 2017.

Given second reading by the Owen County Fiscal Court at a duly convened meeting thereof held on the 28 day of February, 2017, upon motion of Magistrate Todd Spurgeon that the ordinance be passed, adopted and approved and seconded by Magistrate Stewart Bowling with a roll call vote as follows:

District 1: Todd Spurgeon Yes

District 2: Stuart Bowling Yes

District 3: Teresa Davis Yes

District 4: Travis Fitzgerald Yes

Published in the Owen County News Herald on the 8<sup>th</sup> day of the March 2017.

Whereupon Owen County Judge Executive R. Casey Ellis declared the ordinance adopted on its second reading, affixing his signature and the date hereto, and declared that the same be recorded.

---

R. Casey Ellis

Owen County Judge Executive

Attest:

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Laurel Stivers

Owen County Clerk

ORDINANCE 196

AN ORDINANCE RELATING TO THE CONTROL OF ALCOHOLIC BEVERAGES IN OWEN COUNTY KENTUCKY

WHEREAS, Owen Fiscal Court has the authority pursuant to the provisions of KRS 67.083(n), and other applicable law to pass ordinances regulating the sale and transfer of alcoholic beverages; and

WHEREAS, the sale and transfer of alcoholic beverages is now authorized in Owenton, Owen County, Kentucky, pursuant to an election held under KRS 242.1244(2)(a), said citizens of the Owenton Incorporated Precinct, Owen County, voting to allow said sale and transfer of alcoholic beverages under limited conditions; and,

WHEREAS, Owen County Fiscal Court finds it necessary to regulate said sale and transfer of alcoholic beverages.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF OWEN COUNTY, KENTUCKY THE FOLLOWING:

ARTICLE I. IN GENERAL

**Purpose**

The purpose of this Ordinance is to establish uniform regulations and requirements for the licensing and regulations of alcoholic beverage sales, in Owenton Incorporated, Owen County, pursuant to KRS 242.1244(2)(a) for any restaurant or dining facility which seats a minimum of 100 persons and which derives a minimum of seventy percent (70%) of its gross receipts from the sale of food. To realize this, the County shall implement this Ordinance in such a manner as to assure that:

(a) Restaurants and dining facilities licensed under this Ordinance shall seat a minimum of one hundred (100) persons. Only permanent seating, excluding bar-type stools, patio seating or temporary chairs available as needed, satisfies this seating threshold. Said seating must comply with all fire and safety capacity ratings and regulations.

(b) The sale of alcoholic beverages shall be accessory to the sale of food, offered only during times in which the licensee's kitchen and food service staff is on duty. During closing hours, the premises of any licensee for the sale of alcoholic beverages by the drink must be closed to and vacant of all customers and all persons except the licensee and his employees, who shall be allowed on the premises for business purposes only. Alcoholic beverages shall not be sold, given away, delivered or consumed by anyone in any room of the premises during the closing hours and no parties, private or public, shall be held on the premises. The premises shall not be loaned, rented or leased to anyone during closing hours for a party or for any other purposes.

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

The purpose of this ordinance is also to establish regulations and requirements for the licensing of alcoholic beverage sales pursuant to KRS 242.124 for Kentucky Small Farm Wineries.

**Definitions**

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

**Scope**

The Ordinance shall only apply to the sale of alcoholic beverages on the premises of the licensee. Nothing in this Ordinance shall excuse or relieve the licensee, or the agent or any employee of any licensee of any licensee thereof from the restrictions, requirements and penalties of any other Ordinance or Ordinances of the Court or of any statutes of the Commonwealth of Kentucky relating to violations pertaining to alcoholic beverages.

**Adoption of State Alcoholic Beverage Control Law**

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

**Notice to State ABC Board of Fees Levied**

This ordinance is and shall be subject to the provisions of the Kentucky Revised Statute Chapter 243.600 (KRS 243.600). Owen County shall give notice to the State Alcoholic Beverage Board of any fees or assessments fixed and/or levied under the provisions of this ordinance.

**ARTICLE II. ADMINISTRATION**

**Scope**

Under this Ordinance a license shall only be extended to owners and/or operators of those establishments which qualify under KRS 242.1244(2)(a) or any small farm winery pursuant to KRS 242.124

**ARTICLE III - DUTIES OF THE OFFICE OF THE COUNTY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR**

(a) The County Judge-Executive shall serve as the County Alcoholic Beverage Control Administrator (hereinafter referred to as the County ABC Administrator), unless the

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County Judge-Executive appoints someone else to fill the position pursuant to KRS 241.110.

- (b) The County Judge-Executive may from time to time appoint such additional personnel as is necessary to assist the County ABC Administrator in the administration of this Ordinance with approval from Fiscal Court.
- (c) The salary for the office of County ABC Administrator, if any, together with the salaries of any other personnel assisting the County ABC Administrator shall be fixed from time to time by Fiscal Court.
- (d) The function of the County ABC Administrator shall be the same with respect to county licenses and regulations as the function of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky (herein referred to as the ABC Board) with respect to state licenses and regulations, except that no amendments to these regulations proposed by the County ABC Administrator may be less stringent than the statutes relating to alcoholic beverage control, or than regulations of the ABC Board. No regulations of the County ABC Administrator shall become effective until it has been approved by the Owen Fiscal Court.
- (e) No person shall be a County ABC Administrator, an investigator or an employee of the County under the supervision of the County ABC Administrator, who would be disqualified to be a member of the ABC Board under KRS 241.100.
- (f) The County ABC Administrator shall have all authority as authorized under Chapter 241 through 244 of the Kentucky Revised Statutes.
- (g) Should the County ABC Administrator at any time have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any stockholder, agent or employee of a license corporation, has a criminal record, he shall have the authority to require such person to appear in person at the Owen County Sheriff's Department for the purpose of having his or her fingerprints taken.
- (h) The County ABC Administrator shall before entering upon his or her duties as such take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00).
- (i) Appeals from the orders of the County ABC Administrator may be taken to the state ABC Board by filing with the Board within thirty (30) days a certified copy of the orders of the County ABC Administrator. Matters at issue shall be heard by the ABC Board as upon an original proceeding. Appeals from the orders of the County ABC Administrator shall be governed by KRS Chapter 13B, KRS 241.150 and KRS 243.550.

### ARTICLE III. APPLICATION/LICENSES

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BEVERAGE CONTROL

- (a) No person shall, within the County, sell or dispense at retail or have in his possession for sale, nor manufacture or transport within the County for sale, any alcoholic beverages unless he shall first procure and have issued to him/her the appropriate license issued under the provisions of this ordinance, all State statutes and all administrative regulations adopted pursuant thereto. Any revocation, suspension, non-renewal or other action which obviates any license for the sale of alcoholic beverages issued by the State shall also operate to invalidate and make null and void the corresponding license issued pursuant to this ordinance.
- (b) Owen County shall have the power and authority to issue any license for the manufacturing, trafficking and sale of alcoholic beverages permitted by the Kentucky Revised Statute 243.060 (KRS 243.060), or the issuance of any other reasonable administrative regulations as may be necessary for the enforcement or administration of applicable statutes and regulations and/or county ordinances.
- (c) Before an application shall be considered, per KRS 243.360, the applicant must publish a notice of its intent to apply for an alcoholic beverage license in a newspaper meeting the requirements of KRS Chapter 424.
- (1) The advertisement shall state the names 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 office 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 for which the application is made.
- (2) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.
- (d) All licenses granted under this ordinance shall be approved by the County ABC Administrator. Applications for the issuances of new licenses and for renewals of existing licenses shall be in writing and upon forms provided by the ABC Board and Owen County, as amended and supplemented as needed.
- (e) An applicant for an alcoholic beverage license must have his/her county license approved by the County Alcoholic Beverage Control Administrator before he/she is eligible to apply for a State License, Kentucky Revised Statute 243.370 (KRS 243.370).
- (e) All applicants for alcoholic beverages licenses available pursuant to this ordinance must submit the appropriate application for the issuance of a State license as stipulated in Kentucky Revised Statute 243.380 (KRS 243.380) and all other application of State law.
- (f) The application shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the licenses is sought as required by the Kentucky Revised Statutes, and the ABC Board and Owen County, including as follows:

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- (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 Owen County resident indicate when residence was established;
- (6) Whether or not he or she has any interest in any other license of corporation or partnership holding a license under this Ordinance;
- (7) Extent of stock ownership;
- (8) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

Each application shall be accompanied by a certified check, cash or a postal or express money order for the license fee. Payment shall be held in deposit by the county pending state license approval and issuance of the county license by the County ABC Administrator. If the payment of a license fee was erroneously made or the licenses are not issued, the county shall authorize the payment of the refundable amount.

(g) All applicants shall voluntarily submit to a criminal background check and shall sign a waiver allowing the release of this information to the County ABC Administrator.

(h) If, upon review of the application, the County ABC Administrator determines that the applicant has complied with all requirements of the Alcoholic Beverage Control Law, being KRS Chapter 241 through 244. as well as all regulatory provisions of this ordinance, that the location is one that can be approved, including but not limited to the requirements of KRS 243.220, that a license may be issued within the rules fixed by the State Alcoholic Beverage Control Board, and that there are no causes for denial of the license, the County ABC Administrator shall approve the application.

(i) If the County ABC Administrator has reasonable grounds to believe that an applicant has violated any law, rule or regulation relating to alcoholic beverages, he/she may issue to the applicant a written order setting forth the violation and requiring the applicant to show cause why the license should be issued. The County ABC Administrator shall have the right to order, and the applicant shall have the right to request, an evidentiary hearing to examine the violation set forth in the show cause order issued by the County ABC Administrator. Any decision by the County ABC Administrator on the application shall be subject to appeal as provided by law.

(j) All County licenses shall be in such form as may be prescribed by the Fiscal Court and shall contain:

- (1) The name and address of the licensee;
- (2) The number of license;
- (3) The type of license;
- (4) A description by street and number, or otherwise, of the licensed premises;
- (5) The name and address of the owner of the building in which the licensed premises are located;

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- (6) The expiration date of the license;
- (7) A statement in substance that the license shall not be a property or vested right and that it may be revoked at any time pursuant to law.

(k) All licenses approved by the County ABC Administrator and issued in Owen County shall begin on July 1, of any year and shall expire on June 30 of the following year.

(1) All renewal of licenses and payment of license fees must be on file with the County ABC Administrator at least fifteen (15) days before the expiration of the license for the preceding license period of the license shall be canceled, except that the licensee may file a written, verified statement fifteen (15) days prior to the expiration date of the license, setting forth facts justifying an extension. The ABC Administrator may then extend the time for filing of a renewal of the license for a reasonable length of time within his/her sound discretion. The licensee shall pay the license fee from the expiration date of the former license or licenses and payment shall be refunded to the licensee in the event that the license or licenses are not renewed at or before the end of the extension period.

(l) The county licenses shall be issued and the fees collected by the County Clerk. No license shall be issued by the Clerk without approval of the County ABC Administrator, per Kentucky Revised Statute 243.620 (KRS 243.620).

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

(n) Any licenses issued after January 1 of any year shall be assessed a fee equal to one-half (1/2) of the annual fee for the remainder of the license period.

(o) In the event a violation of this Ordinance occurs that requires the revocation of the license the County shall not be required to refund any portion of the license fee.

**Fees Pursuant to KRS 243.060**

(1) These licenses may be issued by the county. The license fees are subject to the provisions of subsection (2) to (6) of this section and are as follows:

- (a) Special Sunday retail drink license, per annum..... \$150.00
- (b) Nonquota 4 retail malt beverage drink license, per annum ..... \$200.00
- (c) Limited restaurant license (includes distilled spirits, wine, and malt beverages), per annum:..... \$1,400.00

(2) The County ABC Administrator shall transmit fees upon collection to the County Treasurer to be deposited into the appropriate designated account. County licenses shall be issued by the County ABC 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 243.360, and the fact the ABC Board Administrator has approved the applicant's state application.

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### **Posting of License**

Each license issue by the County pursuant to this ordinance shall be posed at the licensed premises in the same manner as prescribed by the Kentucky Revised Statute 243.620 (KRS 243.620) for State licenses. An exact duplicate or facsimile of each license issued by the County under this ordinance shall remain in the County Clerk's office part of the public record

### **Refusal of License**

The County ABC Administrator may refuse to issue or renew a license for any of the following reasons:

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

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

(c) If the applicant has made any false material statements in his application.

A license (new issuance, transfer or renewal) may be refused by the County ABC Administrator for any reason which he or she, in the exercise of his or her sound discretion, may deem sufficient.

Appeals may be taken from decisions of the County ABD Administrator to the State Alcoholic Beverage Control Board according to the provisions of Kentucky Revised Statutes 241.150 and 243.550 (KRS 241.200 and KRS 243.500)

### **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 Commonwealth of Kentucky with reference to alcoholic beverages or other cause outside licensee's control then the County shall refund to it the proportionate part of the license if the licensee provides sufficient proof to the County ABC Administrator that such period of inactivity was not the fault of the licensee or the result of a revocation, suspension or other wrongdoing by licensee or agent or employee of the licensee.

### **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 County ABC Administrator after he or she shall be satisfied as to the facts; provided, however, that the person applying for said duplicate license shall pay a fee of twenty dollars (\$20.00) for said duplicate.

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**Temporary Closing:**

In the course of any one day of operation of a licensed premises 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 law enforcement, such recurrence shall be reported to the County ABC Administrator by law enforcement. The County ABC Administrator may, in the interest of public health, safety, morals and welfare, direct law enforcement to temporarily suspend the license in question for the remaining hours of the day in question by locking the premises after dispensing the patrons. The temporary suspension shall remain in effect until review of the alleged violations by the County ABC Administrator or designee; such review shall occur within the next three (3) business days.

**Revocation or Suspension**

(a) Any license may be revoked or suspended by the County ABC Administrator if the licensee shall have violated any of the provisions of the Kentucky Revised Statutes Chapters 241, 242, 243 or 244, or any rule or regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or if such licensee shall have violated or shall violate any act of congress or any rule or regulation of any federal board, agency or commission, or this Ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors terms of the Kentucky Revised Statutes 241, 242, 243 and 244 to be created, 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 County ABC Administrator in the exercise of his or her sound discretion deems sufficient.

(b) A license may be revoked for any of the reasons for which the County ABC Administrator would have been required to refuse a license if the facts had been known.

(c) Any license may be revoked or suspended for the following causes:

- (1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the premises licensed.
- (2) Making any false material statements in an application for a license.
- (3) If within a period of two (2) consecutive years, any licensee or any of his clerks, servants, agents or employees of the licensee shall have been convicted of two (2) violations of the terms and provisions of KRS Chapters 241, 242, 243, 244 or any act heretofore or hereafter in effect relating to the regulation of the manufacture, sale and transportation of alcoholic beverages or if within such period, any licensee or any of the clerks, servants, agents or employees of the licensee shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one (1) such felony and one (1) such misdemeanor.
- (4) Willful and deliberate failure or defaults of a licensee to pay an excise tax or any part thereof, or any penalties imposed by or under the provisions of any statutes, this Ordinance or acts of congress relative to taxation, or for a violation

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of any rules or regulations of the Department of Revenue made in pursuance thereof.

(5) Revocation of any license granted under any act of congress relative to the regulation of manufacture, sale and transportation of alcoholic beverages. Any license 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.

(6) Setting up, conducting, operating or keeping, on the licensed premises, any gaming 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.

#### **Notice to Licensee: Surrender of License; Hearing**

(a) 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 County ABC Administrator. If the revoked license is not forthwith surrendered by the licensee, law enforcement at the request of the County ABC Administrator shall immediately take physical possession of the license and return it to the County ABC Administrator.

(b) When a license has been revoked the former licensee may, with prior approval of the County ABC Administrator, dispose of and transfer his stock of alcoholic beverages to an appropriate entity.

(c) Appeal from the decision of the County ABC Administrator shall be to the ABC Board.

(d) If a license is revoked or suspended by an order of the County ABC Administrator, the licensee shall at once suspended all operations authorized under his or her license.

#### **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 County ABC Administrator and not then until a payment of one hundred (\$100.00) shall be made to the County ABC Administrator.

#### **Review of License (For Restaurants)**

Applicants to whom a license is issued authorizing the sale of alcoholic beverages by the drink pursuant to this Ordinance shall provide periodic information demonstrating compliance with the continuing requirements that seventy percent (70%) of the applicant's gross receipts is earned from the sale of food.

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This documentation shall be provided quarterly for the applicants first year, semi-annually for the second year, and annually thereafter provided that the applicant stays in compliance. This information shall consist of a certificate from a Certified Public Accountant familiar with the applicant's pertinent business records. The certificate shall state:

*"I have conducted a limited scope audit to accepted accounting principles of the pertinent records of \_\_\_\_\_, Licensee under Ordinance No. \_\_\_\_\_ and certify that the Licensee earned at least seventy percent (70%) of its gross receipts from the sale of food during the quarter ending \_\_\_\_\_. The Licensee derived \_\_\_\_\_% of its gross sales from food and \_\_\_\_\_% of its gross receipts from the sale of alcohol."*

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

In the event the seventy percent (70%) food requirement is not met during any particular quarter, the County ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the County ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the seventy percent (70%) minimum food requirement has been met.

#### **Change in Information**

- (a) Since licenses issued by the county may be in the name of a corporation, it is necessary that stock ownership changes in such corporations be reported to the County ABC Administrator. The County ABC 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 change in ownership of stock whereby any person secures 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 securing any interest in 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 an Owen County resident indicate when residence was established;

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(6) Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this act;

(7) Extent on stock ownership

(8) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

This information shall be filed with the County ABC Administrator as an amendment of the application pursuant to which the license was granted.

### **Dormancy**

(a) It is necessary that a licensee actually conduct the business authorized by such license or else the license will be declared dormant and become null and void after ninety (90) days. Such is the intent of this section. Realizing that a licensee, like other business might 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 County ABC Administrator.

(c) Except that the provisions of subsections (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 an federal, state, county or other governmental agency under the 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 County ABC 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 reason set forth herein, and the County ABC 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 that fact that no business is transacted during said period; provided, however, no such license shall be considered valid unless business is conducted thereunder within twelve (12) months from the date of notice to the County ABC Administrator. Such extension may not be extended beyond the renewal date but may be for such times as the County ABC Administrator deems appropriate in exercise of his or her sound discretion.

(d) All renewal licenses must be on file with the County ABC Administrator within thirty (30) days prior to the expiration of the licenses for the preceding license period or the same shall be cancelled, 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 of the premises by an federal, state, county or other governmental agency under the power of eminent domain, 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 statements no less than twenty (20) days from the expiration date on the license, setting forth these facts, and the County ABC Administrator is hereby authorized to extend the time for filing of a renewal of such

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license for a reasonable length of time within the sound discretion of the County ABC 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.

#### **Approval of Premises**

The County ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until said applicant and his or her place of business shall have been approved by the County building inspector, and any and all other inspections required by the Kentucky Building Code.

#### **Delinquent Taxes or Fees**

No license to sell alcoholic or malt beverages shall be granted or renewed to any person who is delinquent in the payment of any taxes or fees due the County at the time of issuing the license; nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are delinquent taxes or fees due the County. Further, if a licensee becomes delinquent in the payment on any taxes or any fees due the County at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension.

#### **Books, Record 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 County ABC Administrator and such County employees who may assist the County ABC Administrator in his or her review.

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

#### **ARTICLE IV. HOURS FOR SALE AND DELIVERY(FOR RESTAURANTS)**

(a) The licensee shall be permitted to sell or dispense alcoholic beverages by the drink Monday through Saturday between the hours of 6:00 a.m. and 11:00 p.m.

(b) It shall be unlawful to sell or offer for sell any alcoholic beverages between 11:00 p.m. and 6:00 a.m. or at any time during the twenty-four (24) hours of a Sunday. During all times when a licensed premises is open and the licensee is not permitted to sell alcoholic beverages, a licensee shall provide a separate area within the licensed premises capable of being locked, closed off or otherwise properly separated, within which is kept all stocks of alcoholic beverages and all fixtures and apparatus connected with the business as a licensee, and said area shall be kept locked or separated.

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(c) All delivery of alcoholic beverages in the County shall be made during normal business hours, Monday through Saturday. No delivery shall occur on Sunday.

(d) The licensee shall be permitted according to KRS 244.290 to sell or dispense any alcoholic beverages during the hours the polls are open on any regular, local option, special or primary election day.

#### ARTICLE V. CONDITIONS, PROHIBITIONS AND RESTRICTIONS

(a) No gambling or game of chance unless otherwise authorized by the Commonwealth of Kentucky shall be permitted in any form on such licensed premises. Dice, slot machines, or any device of chance is prohibited and shall not be kept on the premises.

(b) 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 to as to receive police message broadcast from any law enforcement agency in Owen County as it is now or may hereafter be operated. In addition to other penalties provided for this violation of this section, the Owen County Sheriff, or one of his deputies, or the County ABC Administrator, or his designated investigator, shall have the authority to confiscate any and all radio receiving apparatus.

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

(d) It shall be unlawful for the licensee under this Ordinance who sells alcoholic beverages of any kind, to give away or offer to give away anything of tangible value as a premium prize, or for any other purpose in direct connection with the sale of alcoholic beverages.

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

(f) The licensee shall not sell or dispense alcoholic beverages to any person who is under twenty one (21) years of age.

(g) The licensee shall display at all times in a prominent place a sign at least eight (8) inches by eleven (11) inches (8"x11") in thirty (30) point or larger type which states as follows:

*Persons under the age of twenty-one (21) are subject to fine of up to the maximum allowed by state law if they:*

*(1) Enter licensed premises to buy or have served to them alcoholic beverages.*

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(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.

(h) The licensee, before commencing any business for which a license has been issued, shall post and display the license at all time in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license.

The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverage is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

(i) The licensee shall post in a prominent place easily seen by patrons a sign at least eleven (11) inches by fourteen (14) inches (11"x14") in size, with letters at least one inch (1") high, supplied by the Alcoholic Beverage Control Commission, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.

A person who violates this subsection shall be subject to a fine of not less than ten dollars (\$10.00) nor more than fifty (\$50.00). KRS 243.895

(j) Any off premises signage advertising the sale of alcoholic beverages is prohibited.

(k) No wholesaler or distributor shall sell any alcoholic beverages to any person in Owen County for any consideration except under the usual credit or cash terms of the wholesaler/distributor at or before the time of delivery. Nor shall any retail licensee sell to purchaser for any consideration except for cash at time of purchase.

(l) No licensee shall knowingly employ in connection with his or her business any person who:

- (1) Has been convicted of any felony within the last two (2) years;
- (2) Has twice been convicted of any misdemeanor offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;
- (3) Is under the age of twenty (20) years who will be serving alcoholic beverages or who will be having contact whatsoever with the sale of alcohol as defined under state statute;
- (4) Within two (2) years prior to the date of his or her employment has had any County license under this Ordinance revoked for cause.

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

#### ARTICLE VI. ENFORCEMENT

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County police officers and the County ABC Administrator are authorized to enforce this Ordinance for alleged violations.

### **Investigation and Inspection of Premises**

The County ABC Administrator and any investigator acting under the authority of the County ABC Administrator shall have the full police powers of peace officers within the boundaries of the County. They, as well as any authorized law enforcement officer, may inspect and premises where alcoholic or malt beverages are manufactured, sold, stored, or otherwise trafficked without first obtaining a search warrant.

### **Penalties**

The following penalties shall be in addition to any criminal prosecution instituted in Owen District Court against an alleged violator and fines hereunder shall be payable to the County ABC Administrator.

The County ABC Administrator may assess a fine of not more than five hundred dollars (\$500.00) per violation. This payment of said fine shall be transmitted to the County Treasurer to be deposited in the appropriate designated account.

Any person, firm or corporation who violates any of the provisions of this Ordinance which no other penalty is hereby provided, shall for the first offense, be fine not less than one hundred dollars (\$100.00) or imprisoned in the county jail for not more than six (6) months, or both, and for each second or subsequent violation shall be fined not less than two hundred dollars (\$200.00) or imprisoned in the county jail for not more than six (6) months or both. The penalties provided for in this section shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, joint stock company, association or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

## **ARTICLE VII. MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING**

(a) Persons employed in the selling and servicing of alcoholic beverages shall participate in and complete a server training course provided by the Kentucky Department of Alcoholic Beverage Control.

(b) Persons required to complete training under paragraph (a) above shall complete that training within ninety (90) days of the date on which the person first becomes subject to the training requirements. All persons completing the training required by this section shall be re-certified in responsible beverage server training course provided by the Kentucky Department of Alcoholic Beverage Control not less than once every three (3) years.

(c) Each licensee shall be responsible for compliance with the training requirements and shall maintain for inspection by the County ABC Administrator a record or file on each

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employee that shall contain pertinent training information. Each premise licensed hereunder must at all times when alcoholic beverages are being served have at least one person currently certified in responsible beverage training on duty.

### ARTICLE IX. SIGNS AND ADVERTISING

- (a) All signage shall be in compliance in any and all existing rules and regulations of the City of Owenton and the state of Kentucky.
- (b) Signage which refers directly or indirectly to alcoholic beverages will be limited to one (1) sign not over two (2) square feet that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of displaying advertising which refers directly or indirectly to alcoholic beverages shall be displayed on, nor shall it be visible from the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business cards not larger than two and one-half inches (2 1/2") in size, setting forth the price at which he or she offers alcoholic beverages for sale.
- (c) No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.
- (d) It shall be unlawful for a licensee under this chapter to distribute or cause to be distributed any handbills, circulars, or cards as a medium of advertising alcoholic beverages.
- (e) It shall be unlawful for any person holding a license under this chapter to sell alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in connection with the sale of alcoholic beverages.
- (f) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

### ARTICLE X. IMPLEMENTATION OF ORDINANCE PROVISIONS

From time to time the Owen County Fiscal Court may by resolution or order promulgate such rules and regulations and may publish and utilize such forms and other documents as in its discretion may necessary for the proper implementation of this Ordinance.

### SEVERABILITY

If any section, sentence, clause, or portion of this Ordinance is for any reason declared illegal, unconstitutional, or otherwise invalid, such declaration shall not affect the remaining portions thereof.

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EFFECTIVE DATE

Prohibition, in Owenton Incorporated, is lifted for the limited purpose stated hereinabove effective Nov. 17<sup>th</sup>, 2014.

Upon introduction and second and given First Reading by the Owen Fiscal Court on this the 28 day of Oct, 2014.

Published in the Owen County News Herald on the 12<sup>th</sup> days of the Nov. 2014.

Upon motion made by Magistrate Davis and seconded by Magistrate Ellis, that the ordinance be dully adopted the was called and roll call the vote stood:

Magistrate	<u>Phillips</u>	<u>yes</u>
Magistrate	<u>Ellis</u>	<u>yes</u>
Magistrate	<u>Davis</u>	<u>yes</u>
Magistrate	<u>Bramblett</u>	<u>yes.</u>

Published in the Owen County News Herald on the 3<sup>rd</sup> days of the Dec. 2014.

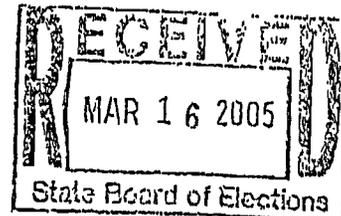
Whereupon Owen County Judge Executive Carolyn H. Keith declared the ordinance adopted on its second reading, affixing her signature and the date hereto, and declared that the same be recorded.

Carolyn Keith  
Carolyn Keith  
Owen County Judge Executive

Attest:

Laurel Stivers  
Laurel Stivers  
Owen County Clerk

RECEIVED  
2015 MAR 13 AM 9 37  
ALCOHOL  
BEVERAGE CONTROL



COMMONWEALTH OF KENTUCKY  
OWEN COUNTY  
EXECUTIVE ORDER  
# 01-05

WHEREAS, it appears that the Elk Creek Vineyards, LLC, 1860 Georgetown Road, Owenton, Kentucky has filed a petition for a local option election with the Owen County Clerk for the issue of retail wine sales from a licensed winery at Elk Creek Vineyards, LLC, 150 Route 330, Owenton, Kentucky pursuant to KRS 243.155(3).

WHEREAS, it appears that the Owen County Clerk has verified said petition and that it has the appropriate number of signatures and information.

NOW, THEREFORE, BE IT ORDERED that an election shall be held in the Lusby Mill C104 Precinct of Owen County, Kentucky for a vote on the issue of retail wine sales from a licensed winery on May 17, 2005 from 6:00 a.m. to 6:00 p.m. at the Eden Shale Farm, Sweet Owen Road, Owenton, Kentucky.

This 11th day of March, 2005

William P. O'Banion  
County Judge/Executive

ATTEST:

  
Mary Kay Duncan, Clerk