

ORDINANCE NO. 16-01 CITY
OF IRVINE, KENTUCKY

AN ORDINANCE AMENDING ORDINANCE §120.40 AND PERMITTING THE
SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY

“BE IT ORDAINED BY THE CITY OF IRVINE, KENTUCKY”

An ordinance amending Ordinance §120.40 and permitting the sale of alcoholic beverages on election days, designating the ordinance as Section §120.40, as amended, in the Code of Ordinances and making the ordinance effective upon adoption and publication.

This summary was prepared by:

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ORDINANCE NO. 16-01
CITY OF IRVINE, KENTUCKY

AN ORDINANCE AMENDING ORDINANCE §120.40 AND PERMITTING THE
SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY

WHEREAS, the City of Irvine, Kentucky, has heretofore adopted Ordinance §120.40, said ordinance establishing the hours of sale for alcoholic beverages in the City of Irvine and it now the wish and desire of the Board of Council of the City of Irvine, Kentucky, to amend said ordinance to permit the sale of alcoholic beverages in the City of Irvine on election days.

§ 120.40 Hours of sale.

(A) Except as provided in division (D) and a license holder under §120.20, no premises for which there has been granted a license for the sale of distilled spirits or wine at retail shall be permitted to remain open for any purpose between 1:00 a.m. and 8:00 a.m., ~~or at any time during the 23 hours of a Sunday after 1:00 a.m., or during the hours the polls are open on any regular or primary, school, or special election day.~~ However, if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and the department is kept locked during the times mentioned above, he shall be deemed to have complied with this section.

(B) Except as provided in division (D), no brewer or distributor shall deliver any malt beverages on Sunday or between the hours of 12:00 a.m. and 6:00 a.m. on any other day of the week. No retailer shall sell, give away, or deliver any malt beverages between 1:00 a.m. and 6:00 a.m. ~~or at any time during the 23 hours of a Sunday after 1:00 a.m. or during the hours the polls are open on an election day.~~ (KRS 244.480)

(C) In all places wherein spirituous, vinous, or intoxicating liquors or malt beverages are sold by the drink for consumption on the premises in the city, all customers must vacate the premises by 1:30 a.m.

(D) Facilities receiving a minimum of fifty (50%) of its income from the sale of food and meeting the requirements of KRS 243.072 shall be eligible to receive a Sunday Retail Drink License. The hours of operation for a facility holding a Sunday NQ-2 Retail Drink License shall be the hours of 1:00 p.m. to 12:00 a.m. on Sundays. This subsection does not exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the Commonwealth of Kentucky. (KRS 244.290) A premise which has been granted a Souvenir Package Sunday Sale License shall be eligible to operate between the hours of 12:00 noon to 12:00 midnight on Sunday. Convenience stores, grocery stores and packaged liquor stores which have been granted a NQ-4 Retail Malt Beverage Package License and/or a Distilled Spirits

and Wine Retail Package License shall be eligible to operate between the hours of 1:00 p.m. to 12:00 a.m. on Sunday.

(E) Private clubs which meet the requirements below shall be eligible to receive a Sunday Retail Drink License. The hours of operation for a facility holding a Sunday retail drink license shall be the hours of 1:00 p.m. to 12:00 a.m. on Sundays. This subsection division does not exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the Commonwealth of Kentucky state (KRS 244.290). Eligible private clubs are those which have been granted all appropriate licenses for the sale of distilled spirits, wine and malt beverages which:

- (1) Having dining facilities with a minimum seating capacity of 100 people at tables;
- (2) Are non-profit, eleemosynary organizations with a membership of at least 200; and
- (3) Have been in existence for a period of at least two years.

(F) Per KRS 244.290, in years where December 31, (New Year's Eve) falls on a Sunday, the hours of operation, on December 31, for any facility holding a valid distilled spirits and wine retail drink license, or a malt beverage retail drink license per § 120.20, shall be from 1:00 p.m. to 1:00 a.m. Monday morning January 1. This division does not exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the state.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF IRVINE, KENTUCKY:

This ordinance shall be referenced as Section §120.40, as amended, in the Code of Ordinances of the City of Irvine, Kentucky.

This ordinance shall be effective upon adoption and publication.

W.J. Noland
W.J. NOLAND, MAYOR

Introduced by the City Council, given first reading and adoption on Jan. 11, 2016.

Given second reading and adoption by the City Council on Feb. 8, 2016.

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ATTESTED: Robin Powell
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IRVINE CITY CODE

CHAPTER 120: ALCOHOLIC BEVERAGES

Section

General Provisions

- 120.01 Definitions
- 120.02 State Law Adopted
- 120.03 Scope
- 120.04 Economic Hardship; retail drink sales

Office of the City Alcoholic Beverage Control Administrator

- 120.10 Alcoholic Beverage Control Administrator
- 120.11 Appeals

Licenses

- 120.20 Classification of licenses; fee schedule
- 120.21 Certain special licenses defined.
- 120.22 Term of licenses; proration of fees.
- 120.23 Form, content of city license
- 120.24 Application fee.
- 120.25 Advertisement.
- 120.26 Other conditions.
- 120.27 Application; renewal
- 120.28 Approval of application
- 120.29 Denial of application
- 120.30 Refund of fees.
- 120.31 Regulatory license fee.
- 120.32 Change of ownership
- 120.33 Transfer of license
- 120.34 Refusal of license; guidelines for approval of quota licenses
- 120.35 Review of license; books, records, audio and visual recordings, and reports.
- 120.36 Dormancy.
- 120.37 Premises selling groceries, gasoline and the like prohibited from obtaining license
- 120.38 "Treating" prohibited; exceptions; sampling

Sale of Alcoholic Beverages

- 120.40 Hours of sale
- 120.41 Compliance with regulations and prohibitions
- 120.42 Maintenance of state license
- 120.43 Display of required licenses and certain signs

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Conditions, Prohibitions and Restrictions

120.50	Criminal conduct on premises prohibited
120.51	Conducting business with minor
120.52	Gambling
120.53	Radio receiving apparatus
120.54	Security
120.55	Prizes prohibited
120.56	Drunkenness
120.57	Underage sales
120.58	Legal transactions for wholesalers, distributors and retailers
120.59	Employment restrictions
120.60	Happy hour restrictions
120.61	Lavatory facilities required
120.62	Nudity and adult entertainment activities prohibited
120.63	Drive-through outlets permitted
120.64	Retail premises not to be disorderly per KRS 244.120
120.65	Consumption on licensed package premises prohibited
120.66	Exceptions
120.67	Habitual congregating

Mandatory Responsible Beverage Service Training

120.70	Mandatory responsible beverage service training
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Signs and Advertising

120.80	Signs and advertising.
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Administration and Enforcement

120.90	Alcoholic beverage control vested in the Police Chief
120.91	Right of entry; search and seizure
120.92	Suspension, revocation of license
120.99	Penalty

GENERAL PROVISIONS

§ 120.01 Definitions.

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 Kentucky Alcoholic Beverage Control law (KRS Chapters 241 through 244) of the Commonwealth of Kentucky and all amendments and supplements thereto. For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"BOARD." The State Alcoholic Beverage Control Board established pursuant to KRS 241.030.

"CATERER (MALT BEVERAGE, DISTILLED SPIRITS AND WINE)." A professional food service business preparing food in a licensed and inspected commissary, transporting food and alcoholic beverages (malt beverage, distilled spirits and wine) to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guests.

"CITY LICENSE." A license established and authorized pursuant to the terms hereof and issued by the city.

"CITY LICENSEE." A person who has been issued a city license pursuant to the terms hereof by the city, including the officers and agents of the licensee.

"KRS." Kentucky Revised Statutes.

"PERSON." Any natural person, corporation, partnership, joint venture, or unincorporated association of persons or any combination thereof, and the shareholders, officers, agents, and servants, and employees thereof.

"PREMISES." The premises described in the city license issued pursuant to the terms hereof and the application therefor.

"RETAIL LIQUOR DRINK SAMPLING LICENSE and RETAIL LIQUOR PACKAGE SAMPLING LICENSE." A license that allows customers to sample distilled spirits and/or wine at a retail liquor drink or a retail liquor package establishment that have met certain requirements.

"SOUVENIR PACKAGE SUNDAY SALES." Pursuant to KRS 244.290(3) (b), a souvenir retail liquor license for Sunday sales may be issued to any licensed Kentucky distiller that has a gift shop or other retail outlet on its premises, if the distillery is located in wet territory and has a souvenir retail package license.

"SPECIAL PRIVATE CLUB LICENSE (NQ-3 Retail Drink License)." A license issued to any nonprofit social, fraternal, military, or political organization club, or entity which for more than two years prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded.

"SPECIAL TEMPORARY LICENSE." A license that may be issued to any regularly

organized fair, exposition, racing association, or other party, when a necessity exists that shall authorize the licensee to exercise the privileges of a distilled spirits, wine and malt beverage Quota retail drink license at designated premises for a specified and limited time, not to exceed 30 days. All restrictions and prohibitions apply.

"STATE." The Commonwealth of Kentucky.

"STATE LICENSE." A license authorized by KRS 243.030 to 243.680.

"TRAFFIC IN ALCOHOLIC BEVERAGES." Any action, business, or transaction in regard to the production, storage, transportation, distribution, sale, delivery, and transfer of alcoholic beverages.

§ 120.02 State law adopted.

The provisions of KRS Chapters 241 through 244 and all amendments thereto, relating to the manufacture, sale, transportation, possession, or other disposition of spirituous, vinous, or intoxicating malt liquor for medicinal, sacramental, scientific, or mechanical purposes are adopted as a portion of this chapter as far as applicable, except as otherwise lawfully provided by city ordinances.

§ 120.03 Scope.

This chapter 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 or ordinances of the city or of any statutes of the state relating to violations pertaining to alcoholic beverages.

§ 120.04 Economic Hardship; Retail Drink Sales.

Pursuant to KRS 243.072, the Irvine City Council has determined that an economic hardship exists with the city of Irvine and that the sale of alcoholic beverages by the drink could aid economic growth. Accordingly, the Irvine City Council has the authority to provide for the issuance of any licenses permitted by KRS 243.070, or the issuance of any other reasonable administrative regulations as may be necessary for the enforcement or regulation of alcoholic beverages within the city limits.

OFFICE OF THE CITY
ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

§ 120.10 Alcoholic Beverage Control Administrator.

- (a) Pursuant to KRS 241.160, there is hereby created the Office of City Alcoholic Beverage Administrator.
- (b) The Mayor shall appoint someone to fill the position of City Alcoholic Beverage Administrator pursuant to KRS 241.170.

- (c) The City ABC Administrator may, from time to time, appoint such additional personnel as is necessary to assist him or her in the administration of the alcoholic beverages laws and ordinances.
- (d) The salary for the office of City ABC Administrator, if any, together with the salaries of any other personnel assisting the City ABC Administrator, shall be fixed from time to time by the City Council.
- (e) The functions of the City ABC Administrator shall be the same with respect to the city licenses and regulations as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky (hereinafter referred to as ABC Board) with respect to state licenses and regulations, except that no amendment to these regulations proposed by the City ABC Administrator may be less stringent than the statutes relating to Alcoholic Beverage Control, or than regulations of the ABC Board. No regulation of the City ABC Administrator shall become effective until the City Commission has first appropriately approved it.
- (f) No person shall be a City ABC Administrator, an Investigator or an employee of the under the supervision of the City ABC Administrator, who would be disqualified to be a member of the ABC Board under KRS 241.100.
- (g) The City ABC Administrator shall have all authority as authorized under KRS Ch. 241 through 244. The City ABC Administrator, and the ABC Administrator's investigators, may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant.
- (h) Should the City 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 licensed corporation, LLC or other business organization, has a criminal record, he shall have the authority to require such person to appear in person at the Irvine Police Department for the purpose of having his or her fingerprints taken.
- (i) The City ABC Administrator before entering upon his or her duties as such, shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00). The ABC Administrator may require any employee under the ABC Administrator's supervision to execute a similar bond in such penal sum as the Administrator deems necessary.

§ 120.11 Appeals.

- (a) Appeals from the orders of the City 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 City ABC Administrator. The Board shall hear matters at issue as upon an original proceeding. Appeals from orders of the City ABC Administrator shall be governed by KRS Chapter 13B.
- (b) When any decision of the City ABC Administrator shall have been appealed, or when a protest has been lodged against an application for any license within the city, and the ABC Board

shall have made a decision regarding such appeal or protested application, the City 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 an appeal is taken from the Board's order, in which case the "final order" is the order entered by the Board upon direction from the reviewing court of last resort in the final order of said reviewing court.

LICENSES

§ 120.20 Classification of Licenses; Fee Schedule.

(A) For the privilege of causing, permitting, and engaging in the actions, business, and transactions authorized thereby in regard to traffic in alcoholic beverages in the city and pursuant to the authority of KRS 243.070, there is hereby established a corresponding city license for each of the state licenses described in the following schedule. The actions, business, and transactions authorized and permitted thereby shall be and are the same as those of the state licenses to which the city licenses correspond and which are indicated and described in the sections of state law indicated in the following schedule. The fees for such city licenses shall be the maximum allowed by law as indicated in the following schedule.

(B) No person shall cause, permit, or engage in any of the actions, business, or transactions authorized by such city and state licenses within the city without both a valid city license and a valid state license.

(C) Only those licenses set out in this section shall be issued. The license fees are subject to the provisions of subsections (15), (16) and (17) of this section.

- (1) **Distilled spirit licenses** as set forth in KRS 243.030:
 - a. Distiller's license, per annum \$ 500.00
 - b. Rectifier's license, per annum \$3,000.00
 - c. Wholesaler's distilled spirits and wine license, per annum \$3,000.00
 - d. Quota retail package license, per annum \$1,000.00
- (2) Quota retail drink license, per annum \$1,000.00
- (3) Special temporary license, per event \$ 166.66
- (4) Nonquota type 1 retail drink license (includes distilled spirits, wine and malt beverages), per annum \$2,000.00
- (5) Nonquota type 2 retail drink license (includes distilled spirits, wine and malt beverages), per annum \$1,000.00
- (6) Nonquota type 3 retail drink license (includes distilled spirits, wine and malt beverages), per annum \$ 300.00
- (7) Distilled spirits and wine special temporary license, per event \$ 200.00
- (8) Special Sunday retail drink license, per annum \$ 300.00
- (9) Extended hours supplemental license, per annum \$2,000.00
- (10) Caterer's license, per annum \$ 800.00
- (11) Bottling house or bottling house storage license, per annum \$1,000.00

- (12) **Malt beverage licenses as follows:**
- a. Brewer's license, per annum \$ 500.00
 - b. Microbrewery license, per annum \$ 500.00
 - c. Malt beverage distributor's license, per annum \$ 400.00
 - d. Nonquota retail malt beverage package license, per annum \$ 200.00
 - e. Nonquota type 4 retail malt beverage drink license, per annum ... \$ 200.00
 - f. Malt beverage brew-on-license, per annum \$ 100.00
- (13) Limited restaurant license (includes distilled spirits, wine and malt beverages), per annum \$1,200.00
- (14) Limited golf course license (includes distilled spirits, wine and malt beverages), per annum \$1,200.00
- (15) The fee for the following license types may not be increased by more than five percent (5%) above the 2013 fee for the current license or the former license type listed beside it during any five (5) year period. The fees for the licenses described in this subsection are still subject to the maximum amounts listed for those licenses in subsections (1) to (14) of this section:
- a. Quota retail package license: retail package liquor licenses;
 - b. Quota retail drink license: retail drink license;
 - c. Nonquota type 1 retail drink license: convention center or convention hotel complex license;
 - d. Nonquota type 2 retail drink license: restaurant drink licenses;
 - e. Nonquota retail malt beverage package license: retail malt beverage license;
 - f. Nonquota type 4 retail malt beverage drink license: retail malt beverage license;
 - g. Limited restaurant; and
 - h. Limited golf course license.
- (16) 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 in excess of five (5) to the same licensee at the same premises.
- (17) The holder of a nonquota retail malt beverage package license may obtain a Nonquota type 4 malt beverage drink license for a fee of fifty dollars (\$50).

§ 120.21 Certain special licenses defined.

- (A) Special temporary licenses. A special temporary license may be issued only as set out in KRS 243.260. This license shall authorize the licensee to exercise the privileges of a quota retail drink license and an NQ4 retail malt beverage licensee at designates premises for a specified and limited time, not to exceed thirty (30) days, and shall expire when the qualifying event ends. All restrictions and prohibitions applying to a distilled spirits and wine quota retail drink licensee or an NQ4 retail malt beverage drink license shall apply also to a special temporary licensee.
- (B) A non-profit organization holding an NQ4 retail malt beverage drink license may be issued a special temporary license to sell distilled spirits and wine by the drink on the licensed premises for a specified and limited time, not to exceed ten (10) days. The

temporary license may be issued in conjunction with any public or private event, including, but not limited to, weddings, receptions, reunions or similar occasions.

(C) A special license is required for Sunday sales. No licensee shall offer alcoholic beverages for sale at any time between 12:00 midnight on Sunday and 6:00 a.m. on Monday unless the licensee has obtained a special license for Sunday sales.

(D) A limited restaurant license may be granted to any qualifying restaurant that permits distilled spirits, wine and beer sales by the drink for consumption on the premises of the qualifying restaurant. Said restaurants must have seating capacity of at least fifty (50) persons and derive at least seventy percent (70%) of their gross receipts from the sale of food if the alcoholic beverage is purchased in conjunction with the sale of food. An LR license does not permit package sales for consumption off the premises. If a restaurant wishes to have a bar or sell alcohol without a corresponding purchase of food, it must have seating capacity of at least one hundred (100) persons and derive at least seventy percent (70%) of its gross receipts from the sale of food.

§ 120.22 Term of License; Proration of fees.

All city licenses, except special temporary licenses, shall be valid for a period of no more than one year and shall begin and end on the dates specified by the Department of Alcoholic Beverage Control Administrative Regulations for the City of Irvine. When any person applies for a new license authorized by KRS Chapters 241 through 244 and City of Irvine Ordinance §120.24 he or she shall be charged, if the license is issued, the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of a preceding license period.

The renewal by the City of Irvine of the certificate or permit of any alcoholic beverage license shall not be construed to waive or condone any violation that occurred prior to the renewal and shall not prevent subsequent proceedings against the licensee.

§ 120.23 Form, content of City license.

(A) The city licenses authorized and established hereby shall each be evidenced by a document, the form and content of which shall be prescribed by regulation of the Alcoholic Beverage Control Administrator.

(B) However, the documents must be of the same color and designation as those of the state licenses to which the city licenses correspond and must:

(1) Comply with all of the provisions for state licenses required by KRS 243.440; and

(2) Contain a declaration that the license authorizes the search of the licensed premises by any peace officer at any time for any purpose; the removal

therefrom of any evidence of any crime or other violation of any law; and the use thereof in any trial or hearing in regard thereto.

§ 120.24 Application fee.

A non-refundable application fee of fifty dollars (\$50.00) shall be paid with the filing of the application for a city license. If the license is granted, the application fee shall be credited against the initial license fee.

§ 120.25 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 Chapter 424. The advertisement shall state the name and address of the applicant. It shall also state the members of the partnership, if the applicant is a partnership, and membership of the LLC if the applicant is an LLC, as well as the name of the business and its address. If the applicant is a corporation, the advertisement shall state the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself. All advertisements shall state the location of the premises for which the license is sought, and the type of license for which application is made.

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

§ 120.26 Other conditions.

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

(a) The City 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 the City Building Inspector, and any and all other inspections required by the Kentucky Building Code;

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

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

(d) No person, whether an applicant for or a shall in any manner attempt to bribe, threaten, unduly influence or intimidate the City ABC Administrator, or any member of his or her staff,

or any state ABC administrator or staff, in any matter in which an application or proposed application for 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 city or state ABC Administrator or staff shall be disqualified from receiving or retaining a license, in addition to other penalties as provided by law. The procedures for appeals shall apply to disqualifications, revocations or suspensions under this section. This section shall not be interpreted to prohibit monetary settlements in lieu of revocation or suspension of license after a final order or revocation or suspension, where the chapter and applicable statutes allow for such payments in settlement.

§ 120.27 Application; Renewal.

Subject to the limitations and restrictions described herein, city licenses shall be originally issued by the Alcoholic Beverage Control Administrator and renewed by him/her upon the expiration thereof upon receipt of the following documents and fees more than 30 days prior to the effective date of an original license and more than 15 days prior to the expiration date of any license to be renewed:

(A) A written application therefore with the truth of the information, statements, and representations therein attested by the signature and the oath or affirmation of the applicant. The form and content of such application shall be prescribed by regulation of the Alcoholic Beverage Control Administrator; however, provision for the following information, statements, and representations shall and must be included therein:

(1) All information required by KRS 243.390 to be contained in the application for state licenses.

(2) A consent by the applicant to the search of the licensed premises by any peace officer at any time for any purpose, the removal therefrom of any evidence of any crime or other violation of any law; and the use thereof in any trial or hearing in regard thereto.

(3) The names and addresses of the applicant and all shareholders.

(B) The approval of the applicant, the application, and the premises described therein by the Alcoholic Beverage Control Administrator.

(C) Documentary evidence of a valid state license which corresponds to the city license for which the application is being made.

(D) The applicable fee, paid in cash or by certified or cashier's check, for the city license which is the subject of the application. No licensee shall enter into or begin operating any business for which a license is required until the license fee has been paid in full.

§ 120.28 Approval of application.

Within 30 days of the date of the application for an original city license and 15 days of the date of an application for renewal of a city license, the Alcoholic Beverage Control Administrator shall, by mail or personal delivery thereof, notify the applicant, in writing, of either the approval thereof or the disapproval thereof and a hearing in regard thereto.

§ 120.29 Denial of application.

As is similarly set forth in KRS 243.450, the Alcoholic Beverage Control Administrator shall not approve any application for a city license if:

(A) The applicant, the application, or the premises described therein do not fully comply with the provisions of this chapter and all laws in regard to alcoholic beverages;

(B) The applicant and/or any shareholder, officer, agent, servant, or employee thereof has caused, permitted, or engaged in any act for which the revocation of a state or city license is authorized;

(C) The applicant and/or any shareholder, officer, agent, servant, or employee thereof had a state license or city license which was revoked within two years of the date of the application, or the premises described therein where the premises or any portion thereof described in a state license or city license revoked during such time;

(D) Any statement or representation in the application is false; or

(E) In the exercise of sound discretion, the Alcoholic Beverage Control Administrator determines any cause or reason for refusing to approve an application reasonably related to the purpose and objective of this chapter and the state laws and regulations of the State Alcoholic Beverage Control Board. Among those factors that the Alcoholic Beverage Control Administrator shall consider in the exercise of his discretion are: public sentiment in the area; number of license outlets in the area; potential for future growth; type of area involved; type of transportation involved; and financial potential of the area.

§ 120.30 Refund of fees.

Should any licensee under this chapter be prohibited from conducting the licensed business for the full period covered by the license because of any changes that may hereafter be made in the laws of the Commonwealth with reference to alcoholic beverages or other cause outside licensee's control, then the city shall refund to licensee the proportionate part of the license fee for the period during which licensee is prevented from carrying on said business if the licensee provides sufficient proof to the City 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.

§ 120.31 Regulatory license fee.

(a) Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee on the gross receipts of sale of alcoholic beverages of each license issued by the City ABC

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

- (b) Payment of such regulatory fee shall be remitted to the City ABC Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the for the estimated cost of any additional policing, regulatory or administrative expense related to the sale of alcoholic beverages in the city. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, except that a credit against a regulatory license fee in the city shall be allowed in an amount equal to any license fee imposed by the city pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the tax return approved for such use by the City Commission. The return and payment are due no later than by the end of the month immediately following each calendar quarter.
- (c) Failure to pay such quarterly remittance within ten (10) days of the due date constitutes a violation and subjects licensee to suspension or revocation.
- (d) Penalty for failure to file a return and pay quarterly remittance by the due date is five percent (5%) of the tax for each ninety (90) days or fraction thereof. The total late filing shall not exceed twenty-five percent of the tax; provided, however, that in no case shall the penalty be less than ten dollars (\$10.00).
- (e) Interest at the rate of eight percent (8%) per annum will to any late payments.

§ 120.32 Change of ownership.

- (a) If after a license to individuals or to a sole proprietor has been issued, there is 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 City ABC Administrator within ten (10) days of the change.
- (b) Since a number of licenses issued by the city are in the name of corporations or other business organizations, it is necessary that ownership changes in such organizations be reported to the City A BC Administrator. The City 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.

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

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

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

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

§ 120.33 Transfer of license.

A city licensee shall not assign or transfer any city license to any other person or premises unless that person and/or premises complies with all of the provisions of this chapter; the transfer of the license is approved by the Alcoholic Beverage Control Administrator; and the transfer of the state license to which the city license corresponds is approved by the state. A transfer fee of \$100 shall be paid to the city for the transfer of the city license.

§ 120.34 Refusal of license; guidelines for approval of quota licenses.

(a) The City ABC Administrator may refuse to issue or renew a license for any of the

following reasons:

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

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

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

(b) In the case of quota licenses, before approving an application, the City ABC Administrator is hereby directed to consider, in addition to the factors set out in KRS 243.450,

243.490 and 243.500, and any other factors the Administrator determines in his or her discretion to be reasonable and pertinent to the license application, the following criteria:

(1) Ownership. The City of Irvine places great value on business owners who are invested in the Irvine community.

(2) Economic. The City of Irvine desires businesses which make the most positive impact on the community, in number of jobs, payroll, property investment and revenues to the City.

(3) Site of Business. The City of Irvine is interested in serving all geographic areas of the city. Therefore, the city does not wish to cluster all licensed ABC outlets in one area.

(4) Aesthetics. The City of Irvine is committed to protecting the character and beauty of our community.

(5) Revitalization of Downtown. The City of Irvine wholeheartedly supports the revitalization of downtown and the revitalization and reuse of existing buildings.

(6) Capital. The City of Irvine values businesses that demonstrate their ability to financially support and sustain their viability.

(7) Public support of licensed business in the area. The City of Irvine intends that sentiment and safety be considered in deciding upon the approval of retail liquor sales licenses in any area of the city.

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

§ 120.35

Review of license; books, records, audio and visual recordings, and reports.

Applicants to whom a license is issued pursuant to this chapter shall provide periodic information demonstrating compliance with the conditions 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 on a schedule to be coordinated with the applicant's quarterly regulatory fee filings. The city shall provide the form schedule to the licensee. The licensee's acceptance of a license to manufacture or traffic in alcoholic beverages shall constitute consent to the filing of the quarterly report. In the case of caterer filing, the quarterly report shall each catered event by type of event, date and address of the event, and shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales during the reporting period. This requirement for filing of reports notwithstanding, the city may at any time come upon the premises of any licensee and examine the books, audio and visual recordings, 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 City 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 City 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.

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

§ 120.36

Dormancy.

- (a) 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.
- (b) Any license under which no business is transacted a period of ninety (90) days shall be deemed inactive unless the conditions set forth in division (c) below are proved to the satisfaction of the City ABC the license shall be surrendered to the ABC Administrator. If the license is not voluntarily surrendered, it shall be revoked by the City ABC Administrator.
- (c) The provisions of division (b) 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 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 City 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 City 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 City ABC Administrator. Such extension may not extend beyond the renewal date but may be for such times as the City ABC Administrator deems appropriate in exercise of his or her sound discretion.

§ 120.37 Premises selling groceries, gasoline and the like prohibited from obtaining license.

(A) As prohibited in KRS 243.088, KRS 243.230 and KRS 243.280, no city license shall be issued to sell malt beverages at retail within or upon any premises from which gasoline and lubricating oil are sold for from which the servicing and repair of motor vehicles is conducted unless there is continuously maintained an inventory on the premises for sale at retail of not less than \$5,000 of food, groceries, and related products valued at cost.

(B) No city license shall be issued to sell distilled spirits or wine at retail by the drink package from any premises used as or in connection with the operation of any business in which a substantial part of the commercial transaction consists of selling at retail staple groceries, or gasoline or lubricating oil.

§ 120.38 “Treating” prohibited; exceptions; sampling

(A) No retail licensee shall give away any alcoholic beverage in any quantity or deliver it in any quantity for less than a full monetary consideration, except as provided by division (B) of this section.

(B) A retailer licensed to sell distilled spirits and wine or a retailer licensed to sell packaged distilled spirits and wine may, after acquiring a license, allow customers to sample distilled spirits and wine under the following conditions:

- (1) Sampling shall be permitted only on licensed premises and during regular business hours.
- (2) A licensee shall not charge for the samples provided to customers
- (3) Sample sizes shall not exceed:
 - (a) One ounce for wine; and
 - (b) One-half ounce for distilled spirits; and
- (4) A Licensee shall limit a customer to:
 - (a) Two distilled spirits samples per day; and
 - (b) Six wine samples per day.

(C) Retailers licensed shall:

- (1) Notify the office of the City Alcoholic Beverage Administrator at City Hall at least seven days in advance of conducting a sampling event; and
- (2) Limit a sampling event to a period not to exceed four consecutive hours between 12:00 noon and 8:00p.m.

SALE OF ALCOHOLIC BEVERAGES

§ 120.40 Hours of sale.

(A) Except as provided in division (D) and a license holder under §120.20, no premises for which there has been granted a license for the sale of distilled spirits or wine at retail shall be permitted to remain open for any purpose between 1:00 a.m. and 8:00 a.m., or at any time during the 23 hours of a Sunday after 1:00 a.m., or during the hours the polls are open on any regular or primary, school, or special election day. However, if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and all fixtures and apparatus connected with his business as a licensee, and the department is kept locked during the times mentioned above, he shall be deemed to have complied with this section.

(B) Except as provided in division (D), no brewer or distributor shall deliver any malt beverages on Sunday or between the hours of 12:00 a.m. and 6:00 a.m. on any other day of the week. No retailer shall sell, give away, or deliver any malt beverages between 1:00 a.m. and 6:00a.m. or at any time during the 23 hours of a Sunday after 1:00 a.m. or during the hours the polls are open on an election day. (KRS 244.480)

(C) In all places wherein spirituous, vinous, or intoxicating liquors or malt beverages are sold by the drink for consumption on the premises in the city, all customers must vacate the premises by 1:30 a.m.

(D) Facilities receiving a minimum of fifty (50%) of its income from the sale of food and meeting the requirements of KRS 243.072 shall be eligible to receive a Sunday Retail Drink License. The hours of operation for a facility holding a Sunday NQ-2 Retail Drink License shall be the hours of 1:00 p.m. to 12:00 a.m. on Sundays. This subsection does not exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the Commonwealth of Kentucky. (KRS 244.290) A premise which has been granted a Souvenir Package Sunday Sale License shall be eligible to operate between the hours of 12:00 noon to 12:00 midnight on Sunday. Convenience stores, grocery stores and packaged liquor stores which have been granted a NQ-4 Retail Malt Beverage Package License and/or a Distilled Spirits and Wine Retail Package License shall be eligible to operate between the hours of 1:00 p.m. to 12:00 a.m. on Sunday.

(E) Private clubs which meet the requirements below shall be eligible to receive a Sunday Retail Drink License. The hours of operation for a facility holding a Sunday retail drink license shall be the hours of 1:00 p.m. to 12:00 a.m. on Sundays.

This subsection division does not exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the Commonwealth of Kentucky state (KRS 244.290). Eligible private clubs are those which have been granted all appropriate licenses for the sale of distilled spirits, wine and malt beverages which:

- (1) Having dining facilities with a minimum seating capacity of 100 people at tables;
- (2) Are non-profit, eleemosynary organizations with a membership of at least 200; and
- (3) Have been in existence for a period of at least two years.

(F) Per KRS 244.290, in years where December 31, (New Year's Eve) falls on a Sunday, the hours of operation, on December 31, for any facility holding a valid distilled spirits and wine retail drink license, or a malt beverage retail drink license per § 120.20, shall be from 1:00 p.m. to 1:00 a.m. Monday morning January 1. This division does not exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the state.

§ 120.41 Compliance with regulations and prohibitions.

(A) At all times during which any person has a valid city license issued pursuant to the provisions hereof, that person shall fully comply with all of the rules, regulations, requirements, and prohibitions set forth in this chapter.

(B) A city licensee shall comply fully with all of the provisions hereof and all of the rules and regulations of the Alcoholic Beverage Control Administrator in regard thereto; all provisions of the state statutes and the rules and regulations of the State Alcoholic Beverage Control Board in regard to the license premises and the actions, business, and transactions conducted thereon subsequent to the issuance of a state license therefor and prior to the expiration, revocation, or suspension thereof which are hereby incorporated herein and made applicable to all city licenses corresponding thereto, the premises described therein, and the actions, business, and transactions conducted thereon; and the city licensee shall comply fully therewith.

§ 120.42 Maintenance of state license.

A city licensee shall maintain the state license to which the city license corresponds and fully comply with all state statutes and the rules and regulations of the State Alcoholic Beverage Control Board in regard thereto.

§ 120.43 Display of required licenses and certain signs.

As required by KRS 244.083, a city licensee who has a valid city retail distilled spirits, wine, or malt beverage license shall cause to be displayed in a conspicuous and prominent place on the licensed premises each of the following documents so that they may be seen and observed by all persons entering the licensed premises:

- (A) A sign or placard at least eight 8 inches by 11 inches in size with the

following message printed on or displayed thereon in 30 point or larger type:

"Persons under the age of twenty-one (21) years are subject to a fine up to Five Hundred (\$500.00) Dollars if they:

- a. Enter license premises to buy or have served or delivered to them any alcoholic beverages; or
- b. Possess, purchase or attempt to purchase any alcoholic beverages; or
- c. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages."

(B) All valid city licenses issued therefor and the state license to which they correspond. The failure to so display such licenses shall be prima facie evidence that no such valid licenses have been issued or exist and all actions, business, and transactions authorized thereby conducted on such premises are illegal and in violation of the provisions hereof and the state statutes and regulations of the State Alcoholic Beverage Control Board in regard thereto.

CONDITIONS, PROHIBITIONS AND RESTRICTIONS

§ 120.50 Criminal conduct on premises prohibited.

A city licensee shall not cause, permit, or engage in any conduct upon the licensed premises by either the commission of a prohibited act or the omission of a required act which is a crime or other violation of any governmental agency having jurisdiction thereof or any officer or agency thereof.

§ 120.51 Conducting business with minor.

As prohibited by KRS 244.080 and 244.085, no person shall cause, permit, encourage, or engage in any of the following actions in the city:

- (A) The possession or consumption of any alcoholic beverages by any person under 21 years of age in or upon any licensed premises or public places; and
- (B) The misrepresentation of the name, address, age, or other identification of any person under 21 years of age for the purpose of obtaining alcoholic beverages.

§ 120.52 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. Dice, slot machines, or any device of chance is prohibited and shall not be kept on such premises.

§ 120.53 **Radio receiving apparatus.**

It shall be unlawful for any licensee licensed under this chapter to have or maintain any radio receiving apparatus on such which is intentionally adjusted so as to receive messages broadcast from any law enforcement agency in Estill County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or the City ABC Administrator, or his or her designated investigator shall have the authority to confiscate any and all such radio receiving apparatus.

§ 120.54 **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 public utilizing the licensed premise. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

§ 120.55 **Prizes prohibited.**

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

§ 120.56 **Drunkenness.**

No licensee or agent or employee of the licensee shall allow any person to become drunk or intoxicated on the nor shall any licensee sell alcoholic 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.

§ 120.57 **Underage sales.**

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

§ 120.58 **Legal transactions for wholesalers, distributors and retail.**

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

§ 120.59 **Employment restrictions.**

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

- (a) Has been convicted of any felony within the last two (2) years;
- (b) 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;
- (c) 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;
- (d) within two (2) years prior to the date of his or her employment, has had any city license under this chapter revoked for cause.

§ 120.60 **Happy hour restrictions.**

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

§ 120.61 **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.

§ 120.62 **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, Jell-O 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 city.

§ 120.63 **Drive-through outlets permitted.**

A licensee is permitted to operate a vehicle "drive-through" outlet for the sale of alcoholic beverages provided the same complies with all building regulations.

§ 120.64 **Retail Premises Not to Be Disorderly Per KRS 244.120.**

1. A retail licensee, a patron, or the licensee's agents, servants, or employees shall not cause, suffer, or permit the licensed premises to be disorderly.
2. Acts which constitute disorderly premises consist of causing, suffering, or permitting patrons, the licensee, or the licensee's servants, agents, or employees to cause public inconvenience, annoyance, or alarm, or create a risk through:
 - (a) engaging in fighting or in violent, tumultuous, or threatening behavior;
 - (b) making unreasonable noise;
 - (c) refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency;
 - (d) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;
 - (e) creating a public nuisance which is further defined by KRS 241.010 (39);
 - (f) engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor; or
 - (g) failing to maintain the minimum health, safety, or sanitary standards established by the state or local government, or state administrative regulations, for the licensed premises.

§ 120.65 **Consumption on licensed package premises prohibited.**

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

§ 120.66 **Exceptions.**

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

§ 120.67 **Habitual congregating.**

- (a) Licensed premises. No person or entity operating 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.
- (b) 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.

MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

§ 120.70 **Mandatory responsible beverage service training**

- (a) All persons employed in the selling and serving of alcoholic beverages shall complete a server course provided by the Kentucky Department of Alcoholic Beverage Control.
- (b) All persons required to complete training under division (a) above shall complete that training within thirty days of the date on which the person first becomes to the requirement. When a new business is licensed to serve alcoholic beverages all employees must be trained to the opening of the business.
- (c) Each licensee shall be responsible for compliance with the training requirements and shall maintain for inspection by the city 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.
- (d) All persons completing the training required by this section shall be re-certified in a responsible beverage server training course provided by the Kentucky Department of Alcoholic Beverage Control not less than once every three (3) years thereafter.

SIGNS AND ADVERTISING

§ 120.80 **Signs and advertising.**

- (a) No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.
- (b) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130 and regulations promulgated thereunder.

- (c) 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.

ADMINISTRATION AND ENFORCEMENT

§ 120.90 Alcoholic beverage control vested in the Chief of Police.

The powers of alcohol beverage control shall be vested in the Chief of Police pursuant to KRS 241.160.

§ 120.91 Right of entry; search and seizure.

A city licensee shall permit the entry and search of the licensed premises by any peace officer at any time for any purpose, and the seizure and removal therefrom of any evidence of any crime or other violation of law and the use thereof in any trial or hearing in regard thereto.

§ 120.92 Suspension or revocation of license.

(A) Pursuant to the procedure set forth in KRS 243.480 through 243.590, city licenses may be either revoked or suspended by the Alcoholic Beverage Control Administrator upon the occurrence of:

- (1) Any violation of the provisions of this chapter or any other alcoholic beverage control ordinance of the city;
- (2) Any violation of any provision of state law in regard to alcoholic beverages or the rules and regulations of the State Alcoholic Control Board in regard thereto;
- (3) Any other cause, reason, or circumstance for which a state license may be revoked or suspended by the Board;
- (4) Any reason for which the City ABC Administrator would have been required to refuse a license if the facts had been known;
- (5) Conviction of the licensee or his or her agent or employee for selling any illegal beverages on the premises licensed;
- (6) Making any false, material statements in an application for a license;
- (7) 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 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 misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one (1) such felony and one (1) such misdemeanor;

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

(9) 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.

(B) However, city licenses must be revoked by the Alcoholic Beverage Control Administrator upon the occurrence of any cause or circumstance which requires revocation of state licenses pursuant to KRS 243.500 or the revocation of a state license to which a city license corresponds. Further, with the approval of the Alcoholic Beverage Control Administrator, a license may, as an alternative and in lieu of part of all of the days of any suspension period, pay the following sums to the city as set forth in KRS 243.480.

Type of Licensee	Fee (per day)
Distillers, rectifiers/ vintners/ brewers, and blenders	\$1,000.00
Wholesale liquor	\$ 400.00
Wholesale beer	\$ 400.00
Retail drink liquor	\$ 50.00
Retail package liquor	\$ 50.00
Retail beer	\$ 50.00
All remaining licensees	\$ 50.00

(C) The procedure for the revocation or suspension of a city license shall consist of a written notice signed by the Alcoholic Beverage Control Administrator and

mailed to the licensee at the address of the licensed premises by certified mail, describing the cause, circumstance, or occurrence and the time and date thereof for which the city license may be revoked and indicating the time and place of a hearing in regard thereto at least five days thereafter at which the licensee and the representatives thereof shall be heard thereon. The hearing thereon shall be conducted by the Alcoholic Beverage Control Administrator according to the procedure prescribed by the State Alcoholic Beverage Control Board for hearings by the Board as supplemented by the regulations of the Alcoholic Beverage Control Administrator. The Alcoholic Beverage Control Administrator shall control and make all decisions in regard to the introduction of evidence and shall hear all arguments in regard thereto. At the conclusion of the hearing, the Alcoholic Beverage Control Administrator shall issue a written decision in regard thereto and mail a certified copy thereof to the licensee at the address of the license premises by certified or registered mail.

§ 120.99 Penalty.

(A) Any person who violates any of the provisions of this chapter shall, upon conviction thereof in a court of competent jurisdiction, be guilty of a misdemeanor and shall be sentenced to pay a fine for each offense or violation of not more than five hundred dollars (\$500).

(B) Any person who violates the distillers license fee provision shall, upon conviction and in accordance with KRS 243.990 (2), be guilty of a misdemeanor and shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or sentenced to imprisonment for no more than six months, or both for the first offense. For the second offense, the person shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or sentenced to imprisonment for no more than six months, or both. On the third and each subsequent offense, the person shall be sentenced to pay a fine of not less than five hundred (\$500) nor more than five thousand dollars (\$5000) or sentenced to imprisonment for not more than five years, or both.

(C) Any person who violates any provision of § 120.20 other than as discussed in division (B) of this section, or any provisions of §§ 120.21 through §§ 120.37, 120.40, 120.42, and/or 120.50 through 120.67 shall, upon conviction and in accordance with KRS 243.990(1) and 244.990(1), be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200), or be imprisoned for no more than six months, or both for the first offense. On the second and each subsequent offense, the person shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or be imprisoned for no more than six months, or both.

(D) Any person who violates any provisions of § 120.43 shall, upon conviction and in accordance with KRS 244.990(5), be deemed to have committed a violation and shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).

(E) Any person who violates any provision of § 120.51 shall, upon conviction and in accordance with KRS 244.990(5) and (6), be deemed to have committed a violation and shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for misrepresentation of age. For use of a false, fraudulent, or altered identification card, paper, or other document to purchase, attempt to purchase, or otherwise obtain any alcoholic beverage, the person shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for a first offense. For a second and each subsequent offense, the person shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2000).

IRVINE

ORDINANCE NUMBE 15-01

AN ORDINANCE RELATED TO THE MANUFACTURING AND TRAFFICKING IN ALCOHOLIC BEVERAGES WITHIN THE CITY OF IRVINE, AND PROVIDING FOR THE REGULATION OF SUCH ACTIVITIES, THE LICENSING OF PERSONS OR ENTITIES ENGAGING IN SUCH MANUFACTURING OR TRAFFICKING, AND FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE.

Whereas on October 8, 2013 a local option election was held pursuant to KRS 242.050, as a result of which election, which was certified on October 9, 2013, manufacturing and trafficking alcoholic beverages in the City of Irvine will be permitted under the provisions of KRS Chapters 241 through 244; and

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

Whereas the City Council deems it prudent and appropriate to provide by ordinance for the licensing and regulation of all manufacturing and trafficking in alcoholic beverages to provide additional protections by regulation for the benefit of the health, safety and welfare of the general public and of children and minors, in particular, and to provide for enforcement of the ordinance as hereinafter set out; and

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

- Promoting economic health within the community;
- Causing the revenue stream created by expanded sales and activities to have the maximum impact on the economic health of the City of Irvine and its business owners and citizens;
- Providing expanded entertainment and cultural venues for local citizens and creating increased tourism traffic and activities;
- Envisioning additions to our existing historic downtown district by the addition of small wine shops, food sales, bakeries, restaurants and cafes;
- Protecting our citizens and the character of our neighborhoods, as well as the entire community, from the extremes that may be associated with alcoholic beverage enterprises;
- Recognizing that dollars spent with local businesses have an expanded multiplying effect on the revenue stream of the community; and

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

-Whereas the following table of contents is contained herein solely for the purpose of convenience as a guide to this ordinance, and not to be considered a part of the substantive content of the ordinance;

Now, therefore, be it ordained by the Irvine City Council: