

## **ORDINANCE NO. 11-2016**

### **AN ORDINANCE OF THE PRESTONSBURG CITY COUNCIL AMENDING ORD. NO. 21-88 SECTION 114.40 TO ALLOW SUNDAY ALCOHOL SALES**

#### **ALCOHOLIC BEVERAGES**

##### **§ 114.17 FORM. CONTENT OF CITY LICENSE.**

(A) All city licenses shall be in a form as may be prescribed by City Council and shall contain:

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

(B) Each kind of license shall be printed so as to be readily distinguished from the other kinds.

(KRS 243.440) (Ord. 21-88, passed 11-28-88)

##### **§ 114.18 APPLICATION: ISSUANCE.**

Subject to the limitations and restrictions described herein, city licenses shall be originally issued by the City Clerk/Tax Collector and renewed by him 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 therefor 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 City ABC 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.

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(3) The names, addresses, photographs, and fingerprints of the applicant and all shareholders, officers, agents, servants, and employees thereof.

(B) The approval of the applicant, the application, and the premises described therein by the City ABC 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. (Ord. 21-88, passed 11-28-88)

**§ 114.19 NOTICE OF APPLICATION REQUIRED.**

Applicants for any license involving the sale, manufacture, or traffic of any alcoholic beverage shall first advertise their intention to apply for a license by publishing a notice of intention in the local newspaper having the largest circulation at least twice within a 30-day period. The applicant shall be responsible for the publication fees. (Ord. 21-88, passed 11-28-88)

**§ 114.20 APPLICATIONS FOR LICENSES BY RESTAURANTS, HOTELS, MOTELS, AND INNS.**

(A) Any application by a bona fide restaurant which meets the qualifications as herein defined for a license to sell alcoholic beverages by the drink for consumption on the premises shall be accompanied by records sufficient to establish to the City ABC Administrator that the applicant derives a minimum of 50% of its gross revenues from the sale of food for consumption on the premises for at least two meals per day, including lunch and dinner, and has a minimum seating capacity of 100 persons at tables, or which derives 25% or more of its gross revenues from the sale of food for consumption on the premises and has a minimum seating capacity of 350 persons at tables. The City ABC Administrator shall review all records which the applicant restaurant must submit as a part of its application for a license, and the City ABC Administrator shall determine if said restaurant meets the criteria contained herein.

(B) Application by a hotel, motel, or inn for a license to sell alcoholic beverages by the drink for consumption on the premises may be issued if it is found by the City ABC Administrator that said hotel, motel, or inn contains not less than 100 persons or a bona fide restaurant open to the general public having dining facilities for not less than 50 sleeping units and has dining facilities for not less than 100 persons at tables. Upon application, the City ABC Administrator himself shall immediately inspect the premises and file his report with the City Council that said inspection revealed that the applicant in fact had the requisite number of sleeping units and dining facilities, and the City Council may thereafter approve the issuance of the license.

(C) Nothing contained herein shall be in any way interpreted to allow for the sale of alcoholic beverages by the drink for consumption on the premises in connection with any business in which a part of the commercial transaction consists of selling, at retail, staple groceries, or which is used solely as an entertainment facility and does not meet the criteria of a bona fide restaurant as defined in § 114.02.

(D) It shall be permissible for a licensee who under KRS 244.330 is permitted to operate one bar, counter, or similar contrivance in the licensed premises under his retail drink license, # because of modern business practices and the enhancement of economic development and opportunities, particularly associated with meeting or convention business, and the larger interior areas of some licensees and the recreational facilities directly associated therewith, to provide for more than one bar within said hotel/motel/inn licensed premises under this chapter to effectively serve the patrons at such premises. A supplemental bar may be allowed to said hotel/motel/inn licensee if such licensee can show the ABC Administrator the need for such supplemental bar. A supplemental bar license may be issued to a hotel/motel/inn retail drink licensee upon showing to the City ABC Administrator of good cause and need for the supplemental license, and the license may only be issued for the use on the premises directly associated with the applicant's existing retail drink license as part of the entire business of said license facility.

(Ord. 21-88, passed 11-28-88; Am. Ord. 13-95, passed 12-11-95)

Cross reference:

Recreational, tourism, and convention activities, see Ch. 118

**§ 114.21 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 City ABC 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. (Ord. 21-88, passed 11-28-88)

**§ 114.22 DENIAL OF APPLICATION.**

As is similarly set forth in KRS 243.450, the City ABC 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 including, but not limited to, those acts as are defined by KRS 243.100, 243.450, 243.500, or 244.120;

(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 were 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 City ABC 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 City ABC Administrator shall consider in the exercise of his discretion are: public sentiment in the area; number of licensed outlets in the area; potential for future growth; type of area involved; type of transportation available; and financial potential of the area.  
(Ord. 21-88, passed 11-28-88)

**§ 114.23 PERSONS WHO MAY NOT BE LICENSED.**

(A) No person shall become a licensee under this chapter who:

(1) Has been convicted of any felony or misdemeanor directly or indirectly attributable to the use of alcoholic beverages, within two years preceding the application;

(2) Is under the age of 21 years;

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

(4) Is a partnership or corporation, unless each member of the partnership or each of the directors, principal officers, or managers of the corporation has not been convicted of any misdemeanor or felony directly attributable to the use of alcoholic beverages, is 21 years of age or more, and is a citizen of the United States;

(5) Has had any license issued under KRS 243.100 relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two years from the date of the revocation or conviction; or

(6) Is a partnership or corporation, if any member of the partnership or any director or principal officer of the corporation has had any license issued under any statute relating to the regulation of

the manufacture, sale, and transportation of alcoholic beverages, revoked for cause or has been convicted of a violation of any such statute, until the expiration of two years from the date of the revocation or conviction. (KRS 243.100)

(B) No license to sell alcoholic beverages shall be granted to any person, firm, or corporation who is delinquent in payment of any taxes due to the city at the time of issuing the license; nor shall any license be granted to sell upon any premises or property, owned and occupied by the licensee, upon which there are any delinquent taxes due to the city. (Ord. 21-88, passed 11-28-88)

**§ 114.24 LICENSES TO SELL ALCOHOLIC BEVERAGES ON CITY PROPERTY RESTRICTED.**

No license to sell alcoholic beverages shall be granted to any person, firm, or corporation for the sale of alcoholic beverages on any real property owned or maintained by the city, including, but not limited to, parking lots, sidewalks, roadways, alley ways, or streets. The City Council may authorize such sale upon the exercise of sound discretion. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**§ 114.25 LICENSE NOT TO BE GRANTED TO PREMISES TRAFFICKING IN CONTROLLED SUBSTANCES.**

No license to sell alcoholic beverages shall be granted to any person, partnership, firm, or corporation who has permitted the use, sale, or trafficking of controlled substances as described in KRS Chapter 218A, to take place on the premises, whether known by the applicant or unknown. Any such use, sale, or trafficking of controlled substances, as defined by KRS Chapter 218A, upon any licensed premises may result in the immediate revocation or suspension of any license issued to said premises, and may further prohibit the named licensee from receiving any license relating to the sale or trafficking of alcoholic beverages within the city for a period of two years thereafter. Any applicant who has been convicted of an offense relating to the use, sale, or trafficking in controlled substances as defined in KRS Chapter 218A, shall not be issued a license under this chapter for a period of at least two years from the date of such conviction. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**§ 114.26 EXCEPTIONS TO LICENSE APPLICATIONS.**

Any resident of the city of Prestonsburg may file with the City ABC Administrator exceptions to an application for the sale of alcoholic beverages for consumption on the premises, and the City ABC Administrator shall conduct a hearing upon said exceptions. The City ABC Administrator shall thereafter reduce his findings and recommendations which shall be presented to the City Council for acceptance, in whole or in part, or rejection in whole or in part. Any party aggrieved by the final action of the City Council may file an appeal with the ABC Board, Frankfort, Kentucky within 30 days from the

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action of the Council, and no license shall be issued until the matter becomes final and nonappealable. The City Council, in the exercise of sound discretion, may direct the City ABC Administrator to issue said license, the appeal notwithstanding, if it has been established that the applicant otherwise meets all qualifications as hereinabove specified for issuance of a license for the sale of alcoholic beverages for consumption on the premises. (Ord. 21-88, passed 11-28-88)

### **§ 114.27 HEARINGS.**

Should a request for a hearing be made, the City ABC Administrator is to hold said hearing pursuant to the general practice procedures found in the Kentucky Rules of Civil Procedure and the following shall apply:

(A) Definitions. All words are used as defined in the Kentucky Alcoholic Beverage Control Law (KRS Chapters 241, 242, 243, and 244), unless otherwise specified;

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

(C) Briefs. Briefs may be filed at the request of the ABC Administrator, or at the option of the applicant or licensee;

(D) Rules of evidence. The rules of evidence governing civil proceedings in state courts shall govern hearings before the City ABC Administrator; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing;

(E) Subpoenas. The City ABC Administrator shall have subpoena power for such hearings and shall at the request of the applicant, who shall provide the Administrator with the names and addresses of those desired, issue them subpoenas;

(F) Transcripts. Upon request and at the cost of the applicant or licensee, the hearing may be transcribed; and

(G) Decisions. All decisions shall be written and based upon evidence developed at the hearing.  
(Ord. 21-88, passed 11-28-88)

### **114.28 EXPIRATION DATE; FRACTIONAL FEES.**

All licenses issued pursuant to this chapter shall expire on June 30 of the year following the year in which said license was issued. Application for renewal of licenses shall be submitted no later than 30 days before expiration thereof and shall be made pursuant to the provisions of this subchapter. (Ord. 21-88, passed 11-28-88)

**S 114.29 TRANSFER OF LICENSE; LOST OR DESTROYED LICENSE.**

(A) No license issued by the city to sell alcoholic beverages at retail shall be transferable or assignable to any other person or any other premises, or to any other part of the building containing the licensed premises, unless the transferee or assignee has submitted application to the Administrator and the same has been approved, and as provided for in KRS 243.640 and KRS 243.650.

(B) A lost or destroyed license may be replaced by the City Clerk/Tax Collector for a fee of ten dollars (\$10) for issuing said duplicate license.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**S 114.30 PREMISES SELLING GROCERIES, GASOLINE, AND THE LIKE PROHIBITED FROM OBTAINING LICENSE.**

(A) As prohibited in 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 or 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 five thousand dollars (\$5,000) of food, groceries, and related products valued at cost.

(1) The term "FOOD AND GROCERIES" referred to in this division (A) shall mean:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption.

(b) Seeds and plants to grow food for personal consumption.

(2) This division (A) shall be effective as to each malt beverage retail license which is no longer eligible for a retail malt beverage license hereunder upon the expiration of any current license issued by the state malt beverage administrator.

(3) The provisions of this division (A) shall not apply to any licensed premises which sells no fuel other than marine fuel.

(B) As prohibited in KRS 243.230, no city license shall be issued to sell distilled spirits or wine at retail by the drink or package from any premises used as or in connection with the operation of any business in which a part of the commercial transaction consists of selling at retail staple groceries, or gasoline or lubricating oil.

(Ord. 21-88, passed 11-28-88)

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**5 114.31 PREMISES DOING MAJORITY OF BUSINESS WITH MINORS PROHIBITED FROM OBTAINING LICENSE.**

No license shall be issued to any person, firm, or corporation at any store or other place of business where the majority of its business consists of selling schoolbooks, school supplies, food, lunches, or drinks to minors, or to a business that is a penny arcade or similar establishment that receives the majority of its business from minors, regardless of the distance of that store or other place of business from a church, school, or hospital. (Ord. 21-88, passed 11-28-88)

**S 114.32 APPLICANT TO PAY FOR OWN LICENSE.**

The license tax for every license issued under this chapter shall be payable by the person who makes application for that license and to whom is issued the license; and no other person, firm, or corporation shall pay for any license issued under this chapter. In addition to all other penalties provided in this chapter, a violation of this section shall authorize and require the revocation of the license, the tax for which was paid by another, and also the revocation of the license, if any, of the person, firm, or corporation so paying the license fees of another. (Ord. 21-88, passed 11-28-88)

**5 114.33 REGULATORY LICENSE FEE.**

(A) A regulatory license fee is imposed on the gross retail receipts of alcoholic beverages of each license issued under this chapter. The license fee for the effective date shall be three percent (3%); thereafter, City Council may adopt at the budget adoption for the fiscal year, those percentage rates as shall be reasonably estimated to ensure full reimbursement to the city for the cost of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages. The fee shall be in addition to any other tax, fee, or license permitted by law.

(B) Payment of the fee shall accompany the tax returns for use by City Council and shall be submitted to the City Finance Director by the twentieth (20) day of each month for the preceding month's sales.

(C) Failure to pay a monthly remittance within ten (10) days of the due date constitutes a violation for which the license may be suspended or revoked.

(D) Penalty for failure to file a return and pay the monthly remittance by the due date is twenty percent (20%) of the tax for each thirty (30) days or a fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the tax; however, in no case shall the penalty be less than twenty percent (20%) of the tax.



(E) Interest at the rate of twenty percent (20%) per annum will apply to any late payments. (Ord. 21-88, passed 11-28-88; Am. Ord. 7-98, passed 7-13-98)

Statutory reference:

Regulatory license fee, see KRS 243.075

**S 114.34 REPORT OF WHOLESALER.**

Every wholesaler of alcoholic beverages who sells within the city shall report to the Finance Director of the city, on a form to be provided by the Finance Director, the following information:

(A) The names of all retailers to whom alcoholic beverages were sold in the preceding quarter;

(B) The gross revenues received by the wholesaler from each retailer; and

(C) The total quantity of alcoholic beverages sold to each retailer in cans, cases, or kegs, as appropriate, provided that the information provided to the Director of Finance is calculated to permit the Director of Finance to determine the quantities of cases, cans, and kegs received by each retailer.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**114.40 HOURS.**

Premises licensed under this chapter may remain open for business daily from 9:00 a.m. until 2:00 a.m. prevailing time, and shall have their last call for drinks at 1:30 a.m., except that no sale of alcoholic beverages by the drink may be made from 1:00 a.m. on Sunday until 9:00 a.m. on Monday. **Sunday for golf courses and 1:00 pm for retail by the drink and package sales. Sunday sales of alcoholic beverages will be permitted on golf courses from 9:00 am until 9:00 pm. retail by the drink and package sales from 1:00 pm until 9:00 pm** and said licensed premises shall not sell any alcoholic beverages on Christmas Day (December 25), nor on any election day during the time when the polls are open. All persons except for employees, agents, or licensees shall be off the premises no later than one hour after the close of sales. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

Statutory reference:

Authority to regulate hours of sale, see KRS 244.480

**S 114.41 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 City ABC 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 licensed 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. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**S 114.42 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. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**114.43 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 eleven (11) inches in size with the following message printed or displayed thereon in thirty (30) point or larger type:

"Persons under the age of twenty-one (21) years are subject to a fine up to five hundred dollars (\$500) if they:

- a. Enter licensed 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 licenses 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.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

Statutory reference:

Display of state license required, see KRS 243.620, 244.270, and 244.360

**§ 114.44 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 law, rule, or regulation of any governmental agency having jurisdiction thereof or any officer or agency thereof. Any such conduct upon the licensed premises by any person may result in the immediate revocation or suspension of the license, and may subject the licensee to other penalties as more specifically set out hereafter. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**§ 114.45 BUSINESS TO BE CONDUCTED CONTINUOUSLY; EXCEPTIONS.**

(A) A city licensee who has a valid city wholesale or retail distilled spirits, wine, or malt beverage license must conduct the actions, business, and transactions authorized thereby upon the licensed premises.

(B) When no such actions, business, or transactions are conducted thereon for a period of 90 consecutive calendar days, the city license therefor shall become null and void and revoked by the City ABC Administrator unless:

(1) The city licensee is unable to continue in business at the premises for which a license is issued due to an act of God; casualty; the acquisition of the premises by any federal, state, city, or other governmental agency under power of eminent domain; acquisition of any private corporation through its power of eminent domain granted to it, whether such acquisition is voluntary or involuntary; or loss of lease through failure of the landlord to renew the existing lease; and

(2) Prior to the discontinuance of business at the licensed premises or immediately thereupon if such is due to an act of God, the city licensee delivers to the City ABC Administrator a written statement signed by the city licensee and verified by the oath or affirmation thereof indicating the discontinuance of business at the licensed premises for any of the causes or reasons described herein. (Ord. 21-88, passed 11-28-88)

**5 114.46 SALES TO BE CONDUCTED OPENLY.**

No person holding a license under the provisions of this chapter shall sell any alcoholic beverages behind blinds or screens. All sales shall be conducted openly and without any attempt to hide them or screen them from public view. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

**5 114.47 CONDITIONS, PROHIBITIONS. AND RESTRICTIONS.**

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

(A) Every licensed hotel, motel, or inn shall be entitled to serve such beverages as said licensee is entitled to serve upon the issuance of a license under this chapter and in such room or rooms at banquets, dinners, and where meals are served; however, no hotel, motel, or inn shall maintain or operate or permit to be operated more than one bar or room where alcoholic beverages are sold which is open to the general public without first obtaining a separate license for each bar or room which is open to the general public in accordance with this chapter.

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

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

(D) It shall be unlawful for any licensee licensed under this chapter to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from the City Police Radio Station as it is now or may hereinafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or City Administrator shall have the authority to confiscate any and all such radio receiving apparatus.

(E) It shall be unlawful for any licensee under this chapter to sell, to smoke, or to keep or permit to be sold, smoked, or kept upon the licensed premises any marijuana or controlled substances as defined in KRS Chapter 218A. It shall be unlawful for a licensee, except licensed drug stores, to keep or sell or permit to be sold or used on the licensed premises any narcotic or barbituate drugs. In addition to other penalties set out in this chapter for the violation of this section, the City ABC Administrator shall also have the authority to revoke the license issued to said premises.

(F) The licensee shall be responsible for maintaining security on his premises which shall include 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 premises. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

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

(H) It shall be unlawful for any licensee under this chapter to give away or offer to give away anything tangible of value as a premium or prize in connection with the sale of alcoholic beverages.

(I) 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.

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

(K) No person under 21 years of age shall enter any premises that is licensed for the sale of alcoholic beverages by the drink for the purpose of purchasing and receiving any alcoholic beverages. No person under 21 years of age shall possess for his or her own use, or purchase or attempt to purchase or have another purchase for him or her, any alcoholic beverage by the drink; no person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages by the drink; no person under 21 years of age shall misrepresent his or her age for the purpose of inducing any licensee or other employee to sell or serve any alcoholic beverages to such person. No person under 21 years of age shall use or attempt to use any false, fraudulent, or altered identification card or paper or any document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage. (Ord. 21-88, passed 11-28-88)

**ADMINISTRATION AND ENFORCEMENT**

**114.65 ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR.**

As required by KRS 241.160 and as set forth in § 31.40, the office of Alcoholic Beverage Control Administrator, also known as the City ABC Administrator, is hereby established.

**S 114.66 RIGHT OF ENTRY; SEARCH AND SEIZURE.**

Every applicant procuring a license hereby consents to the entry of police or other duly authorized representatives of the city or state at all reasonable hours for the purpose of inspection and search, and consents to the removal from the premises of all things and articles there had in violation of city ordinances or state laws, and consents to the introduction of those things and articles in evidence in any prosecution that may be brought for those offenses. (Ord. 21-88, passed 11-28-88)

**S 114.67 SUSPENSION. 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 City ABC 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 Beverage Control Board in regard thereto; or
- (3) Any other cause, reason, or circumstance for which a state license may be revoked or suspended by the Board.

(B) However, city licenses must be revoked by the City ABC 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 City ABC Administrator, a licensee may, as an alternative and in lieu of part or all of the days of any suspension period, pay the following sums to the city as set forth in KRS 243.480: distillers, rectifiers, vintners, brewers, and blenders: \$1000 per day; wholesale liquor licensees: \$400 per day; wholesale beer licensees: \$100 per day; retail drink liquor licensees: \$25 per day; retail package liquor licensees: \$25 per day; retail beer licensees: \$10 per day; and all remaining licensees: \$10 per day.

(C) The procedure for the revocation or suspension of a city license shall consist of a written notice signed by the City ABC Administrator and mailed to the licensee at the address of the licensed

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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 City ABC Administrator in the city and according to the procedure prescribed by the State Alcoholic Beverage Control Board for hearings by the Board as supplemented by the regulations of the City ABC Administrator. The City ABC 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 City ABC Administrator shall issue a written decision in regard thereto and mail a certified copy thereof to the licensee at the address of the licensed premises by certified or registered mail. (Ord. 21-88, passed 11-28-88)

### **114.99. PENALTY.**

The following penalties shall be in addition to any criminal prosecution instituted in the Floyd District or Circuit Court against any alleged violator and fines hereunder shall be payable to the City ABC Administrator:

(A) Any person, firm, or corporation that holds a license for the retail sale of alcoholic beverages who knowingly provides, by sale or gift, directly or indirectly, alcoholic beverages for the use or consumption by anyone under the age of 21 years, shall for the first offense be fined in the sum of \$500, and shall have his license suspended for a period of seven days; and for the second offense, his license shall be suspended for a period of 14 days, and he shall forfeit his bond made at application for the license; and for the third offense, he shall be subject to a fine of \$2,000 and revocation of his license.

(B) Any person 21 years of age or older, not being a licensee, who shall provide, by sale or gift, alcoholic beverages for the use and consumption by person or persons under the age of 21 years shall be fined, for each offense, the sum of \$500.

(C) Any person who violates any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than \$10 nor more than \$500, or imprisoned in the county jail for not more than six months, or both.  
(Ord. 21-88, passed 11-28-88)

**Done this 28<sup>th</sup> day of November, 2016.**

**/s/ Les Stapleton, Mayor**

**/s/ Sharon Setser, City Clerk**

CHAPTER 114: ALCOHOLIC BEVERAGES

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## GENERAL PROVISIONS

§ 114.01 TITLE.

This chapter shall be known as and may be cited as the alcoholic beverage control regulations of the city.  
(Ord. 21-88, passed 11-28-88)

§ 114.02 DEFINITIONS.

Words used through this chapter, unless the context requires otherwise, shall have the same definitions as set out in the Kentucky Alcoholic Beverage Control Law (KRS Chapters 241, 242, 243, and 244), and all amendments and supplements thereto, unless specifically defined herein.

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

"BONA FIDE RESTAURANT." Any retail establishment which derives more than 50% or more of its gross revenues for the sale of food for consumption on the premises for at least two meals per day, including lunch and dinner, and has a minimum seating capacity of 100 persons at tables or which derives 25% or more of its gross revenues from the sale of food for consumption on the premises and has a minimum seating capacity of 350 persons at tables.

"CARRY-OUT." Any retail establishment which has as its purpose, among other things, the sale of alcoholic beverages for consumption off the premises and, for the purposes of this chapter, shall include retail package liquor stores. It shall include, but not be limited to, grocery stores, markets, express-type markets by whatever name known, bait shops, fruit and vegetable markets, drug stores, and similar premises.

"DISTILLED SPIRITS." Any alcoholic beverage except malt beverage and wine.

"LICENSE." Any premises licensed by the city to sell alcoholic beverages whether by the drink for consumption on the premises or otherwise, and relates to the sale of any combination of the same.

"MALT BEVERAGE." Any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than .5% by volume and not more than 4.8% of alcohol by weight or 6.02% of alcohol by volume.

"PERSON." Any natural person, corporation, partnership, joint venture, or unincorporated association of persons or any combination



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thereof, and the shareholders, offices, agents, servants, and employees thereof.

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

"STATE." The Commonwealth of Kentucky.

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

"TAVERN." Any retail establishment for which the primary purpose of existence is the retail sale of alcoholic beverages for consumption on the premises, and which derives less than 50% of its gross revenues from the sale of food; or any retail establishment for which the primary purpose of existence is entertainment, and which may, in addition to entertainment, offer food and/or alcoholic beverages for consumption on the premises.

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

"WINE." The product of the normal alcoholic fermentation of the juices of fruits, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine, and seasonal conditions. It includes champagne and sparkling and fortified wine of an alcoholic content not to exceed 24% by volume. It includes preparations or mixtures vended in retail containers if such preparations or mixtures contain not exceeding 15% of alcohol by volume.  
(Ord. 21-88, passed 11-28-88; Am. Ord. 13-95, passed 12-11-95)

## LICENSES

§ 114.15 LICENSE REQUIRED.

No person, firm, or corporation conducting a place of business in the city patronized by and open to the general public, or any private club as defined by KRS 243.270, who does not hold the necessary license or licenses, as herein provided, shall permit any person to, nor shall he, sell, barter, loan, give away, or drink any alcoholic beverages on the premises of his place of business, nor shall any proprietor of any unlicensed premises patronized by and open to the general public, or any agent or employee of that proprietor, have in his possession any alcoholic beverages on any portion of his premises which is open to the general public.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.16 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

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permitted thereby and the expiration dates thereof 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 therefor.

Ord. 21-88, passed 11-28-88) Penalty, see § 114.99



§ 114.17 FORM, CONTENT OF CITY LICENSE.

(A) All city licenses shall be in a form as may be prescribed by City Council and shall contain:

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

(B) Each kind of license shall be printed so as to be readily distinguished from the other kinds.

(KRS 243.440) (Ord. 21-88, passed 11-28-88)

§ 114.18 APPLICATION; ISSUANCE.

Subject to the limitations and restrictions described herein, city licenses shall be originally issued by the City Clerk/Tax Collector and renewed by him 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 therefor 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 City ABC 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.

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(3) The names, addresses, photographs, and fingerprints of the applicant and all shareholders, officers, agents, servants, and employees thereof.

(B) The approval of the applicant, the application, and the premises described therein by the City ABC 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.  
(Ord. 21-88, passed 11-28-88)

§ 114.19 NOTICE OF APPLICATION REQUIRED.

Applicants for any license involving the sale, manufacture, or traffic of any alcoholic beverage shall first advertise their intention to apply for a license by publishing a notice of intention in the local newspaper having the largest circulation at least twice within a 30-day period. The applicant shall be responsible for the publication fees.  
(Ord. 21-88, passed 11-28-88)

§ 114.20 APPLICATIONS FOR LICENSES BY RESTAURANTS, HOTELS, MOTELS, AND INNS.

(A) Any application by a bona fide restaurant which meets the qualifications as herein defined for a license to sell alcoholic beverages by the drink for consumption on the premises shall be accompanied by records sufficient to establish to the City ABC Administrator that the applicant derives a minimum of 50% of its gross revenues from the sale of food for consumption on the premises for at least two meals per day, including lunch and dinner, and has a minimum seating capacity of 100 persons at tables, or which derives 25% or more of its gross revenues from the sale of food for consumption on the premises and has a minimum seating capacity of 350 persons at tables. The City ABC Administrator shall review all records which the applicant restaurant must submit as a part of its application for a license, and the City ABC Administrator shall determine if said restaurant meets the criteria contained herein.

(B) Application by a hotel, motel, or inn for a license to sell alcoholic beverages by the drink for consumption on the premises may be issued if it is found by the City ABC Administrator that said hotel, motel, or inn contains not less than 100 persons or a bona fide restaurant open to the general public having dining facilities for not less than 50 sleeping units and has dining facilities for not less than 100 persons at tables. Upon application, the City ABC Administrator himself shall immediately inspect the premises and file his report with the City Council that said inspection revealed that the applicant in fact had the requisite number of sleeping units and dining facilities, and the City Council may thereafter approve the issuance of the license.



(C) Nothing contained herein shall be in any way interpreted to allow for the sale of alcoholic beverages by the drink for consumption on the premises in connection with any business in which a part of the commercial transaction consists of selling, at retail, staple groceries, or which is used solely as an entertainment facility and does not meet the criteria of a bona fide restaurant as defined in § 114.02.

(D) It shall be permissible for a licensee who under KRS 244.330 is permitted to operate one bar, counter, or similar contrivance in the licensed premises under his retail drink license, because of modern business practices and the enhancement of economic development and opportunities, particularly associated with meeting or convention business, and the larger interior areas of some licensees and the recreational facilities directly associated therewith, to provide for more than one bar within said hotel/motel/inn licensed premises under this chapter to effectively serve the patrons at such premises. A supplemental bar may be allowed to said hotel/motel/inn licensee if such licensee can show the ABC Administrator the need for such supplemental bar. A supplemental bar license may be issued to a hotel/motel/inn retail drink licensee upon showing to the City ABC Administrator of good cause and need for the supplemental license, and the license may only be issued for the use on the premises directly associated with the applicant's existing retail drink license as part of the entire business of said license facility.  
(Ord. 21-88, passed 11-28-88; Am. Ord. 13-95, passed 12-11-95)

Cross reference:

Recreational, tourism, and convention activities, see Ch. 118

§ 114.21 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 City ABC 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.  
(Ord. 21-88, passed 11-28-88)

§ 114.22 DENIAL OF APPLICATION.

As is similarly set forth in KRS 243.450, the City ABC 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 including, but not limited to, those acts as are defined by KRS 243.100, 243.450, 243.500, or 244.120;



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(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 were 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 City ABC 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 City ABC Administrator shall consider in the exercise of his discretion are: public sentiment in the area; number of licensed outlets in the area; potential for future growth; type of area involved; type of transportation available; and financial potential of the area.  
(Ord. 21-88, passed 11-28-88)

§ 114.23 PERSONS WHO MAY NOT BE LICENSED.

(A) No person shall become a licensee under this chapter who:

(1) Has been convicted of any felony or misdemeanor directly or indirectly attributable to the use of alcoholic beverages, within two years preceding the application;

(2) Is under the age of 21 years;

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

(4) Is a partnership or corporation, unless each member of the partnership or each of the directors, principal officers, or managers of the corporation has not been convicted of any misdemeanor or felony directly attributable to the use of alcoholic beverages, is 21 years of age or more, and is a citizen of the United States;

(5) Has had any license issued under KRS 243.100 relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any such statute, until the expiration of two years from the date of the revocation or conviction; or

(6) Is a partnership or corporation, if any member of the partnership or any director or principal officer of the corporation has had any license issued under any statute relating to the regulation of



the manufacture, sale, and transportation of alcoholic beverages, revoked for cause or has been convicted of a violation of any such statute, until the expiration of two years from the date of the revocation or conviction.

(KRS 243.100)

(B) No license to sell alcoholic beverages shall be granted to any person, firm, or corporation who is delinquent in payment of any taxes due to the city at the time of issuing the license; nor shall any license be granted to sell upon any premises or property, owned and occupied by the licensee, upon which there are any delinquent taxes due to the city.

(Ord. 21-88, passed 11-28-88)

§ 114.24 LICENSES TO SELL ALCOHOLIC BEVERAGES ON CITY PROPERTY RESTRICTED.

No license to sell alcoholic beverages shall be granted to any person, firm, or corporation for the sale of alcoholic beverages on any real property owned or maintained by the city, including, but not limited to, parking lots, sidewalks, roadways, alley ways, or streets. The City Council may authorize such sale upon the exercise of sound discretion.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.25 LICENSE NOT TO BE GRANTED TO PREMISES TRAFFICKING IN CONTROLLED SUBSTANCES.

No license to sell alcoholic beverages shall be granted to any person, partnership, firm, or corporation who has permitted the use, sale, or trafficking of controlled substances as described in KRS Chapter 218A, to take place on the premises, whether known by the applicant or unknown. Any such use, sale, or trafficking of controlled substances, as defined by KRS Chapter 218A, upon any licensed premises may result in the immediate revocation or suspension of any license issued to said premises, and may further prohibit the named licensee from receiving any license relating to the sale or trafficking of alcoholic beverages within the city for a period of two years thereafter. Any applicant who has been convicted of an offense relating to the use, sale, or trafficking in controlled substances as defined in KRS Chapter 218A, shall not be issued a license under this chapter for a period of at least two years from the date of such conviction.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.26 EXCEPTIONS TO LICENSE APPLICATIONS.

Any resident of the city of Prestonsburg may file with the City ABC Administrator exceptions to an application for the sale of alcoholic beverages for consumption on the premises, and the City ABC Administrator shall conduct a hearing upon said exceptions. The City ABC Administrator shall thereafter reduce his findings and recommendations which shall be presented to the City Council for acceptance, in whole or in part, or rejection in whole or in part. Any party aggrieved by the final action of the City Council may file an appeal with the ABC Board, Frankfort, Kentucky within 30 days from the



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action of the Council, and no license shall be issued until the matter becomes final and nonappealable. The City Council, in the exercise of sound discretion, may direct the City ABC Administrator to issue said license, the appeal notwithstanding, if it has been established that the applicant otherwise meets all qualifications as hereinabove specified for issuance of a license for the sale of alcoholic beverages for consumption on the premises.

(Ord. 21-88, passed 11-28-88)

§ 114.27 HEARINGS.

Should a request for a hearing be made, the City ABC Administrator is to hold said hearing pursuant to the general practice procedures found in the Kentucky Rules of Civil Procedure and the following shall apply:

(A) Definitions. All words are used as defined in the Kentucky Alcoholic Beverage Control Law (KRS Chapters 241, 242, 243, and 244), unless otherwise specified;

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

(C) Briefs. Briefs may be filed at the request of the ABC Administrator, or at the option of the applicant or licensee;

(D) Rules of evidence. The rules of evidence governing civil proceedings in state courts shall govern hearings before the City ABC Administrator; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing;

(E) Subpoenas. The City ABC Administrator shall have subpoena power for such hearings and shall at the request of the applicant, who shall provide the Administrator with the names and addresses of those desired, issue them subpoenas;

(F) Transcripts. Upon request and at the cost of the applicant or licensee, the hearing may be transcribed; and

(G) Decisions. All decisions shall be written and based upon evidence developed at the hearing.

(Ord. 21-88, passed 11-28-88)

§ 114.28 EXPIRATION DATE; FRACTIONAL FEES.

All licenses issued pursuant to this chapter shall expire on June 30 of the year following the year in which said license was issued. Application for renewal of licenses shall be submitted no later than 30 days before expiration thereof and shall be made pursuant to the provisions of this subchapter.

(Ord. 21-88, passed 11-28-88)

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§ 114.29 TRANSFER OF LICENSE; LOST OR DESTROYED LICENSE.

(A) No license issued by the city to sell alcoholic beverages at retail shall be transferable or assignable to any other person or any other premises, or to any other part of the building containing the licensed premises, unless the transferee or assignee has submitted application to the Administrator and the same has been approved, and as provided for in KRS 243.640 and KRS 243.650.

(B) A lost or destroyed license may be replaced by the City Clerk/Tax Collector for a fee of ten dollars (\$10) for issuing said duplicate license.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.30 PREMISES SELLING GROCERIES, GASOLINE, AND THE LIKE PROHIBITED FROM OBTAINING LICENSE.

(A) As prohibited in 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 or 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 five thousand dollars (\$5,000) of food, groceries, and related products valued at cost.

(1) The term "FOOD AND GROCERIES" referred to in this division (A) shall mean:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption.

(b) Seeds and plants to grow food for personal consumption.

(2) This division (A) shall be effective as to each malt beverage retail license which is no longer eligible for a retail malt beverage license hereunder upon the expiration of any current license issued by the state malt beverage administrator.

(3) The provisions of this division (A) shall not apply to any licensed premises which sells no fuel other than marine fuel.

(B) As prohibited in KRS 243.230, no city license shall be issued to sell distilled spirits or wine at retail by the drink or package from any premises used as or in connection with the operation of any business in which a part of the commercial transaction consists of selling at retail staple groceries, or gasoline or lubricating oil.

(Ord. 21-88, passed 11-28-88)



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§ 114.31 PREMISES DOING MAJORITY OF BUSINESS WITH MINORS PROHIBITED FROM OBTAINING LICENSE.

No license shall be issued to any person, firm, or corporation at any store or other place of business where the majority of its business consists of selling schoolbooks, school supplies, food, lunches, or drinks to minors, or to a business that is a penny arcade or similar establishment that receives the majority of its business from minors, regardless of the distance of that store or other place of business from a church, school, or hospital.  
(Ord. 21-88, passed 11-28-88)

§ 114.32 APPLICANT TO PAY FOR OWN LICENSE.

The license tax for every license issued under this chapter shall be payable by the person who makes application for that license and to whom is issued the license; and no other person, firm, or corporation shall pay for any license issued under this chapter. In addition to all other penalties provided in this chapter, a violation of this section shall authorize and require the revocation of the license, the tax for which was paid by another, and also the revocation of the license, if any, of the person, firm, or corporation so paying the license fees of another.  
(Ord. 21-88, passed 11-28-88)

§ 114.33 REGULATORY LICENSE FEE.

(A) A regulatory license fee is imposed on the gross retail receipts of alcoholic beverages of each license issued under this chapter. The license fee for the effective date shall be three percent (3%); thereafter, City Council may adopt at the budget adoption for the fiscal year, those percentage rates as shall be reasonably estimated to ensure full reimbursement to the city for the cost of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages. The fee shall be in addition to any other tax, fee, or license permitted by law.

(B) Payment of the fee shall accompany the tax returns for use by City Council and shall be submitted to the City Finance Director by the twentieth (20) day of each month for the preceding month's sales.

(C) Failure to pay a monthly remittance within ten (10) days of the due date constitutes a violation for which the license may be suspended or revoked.

(D) Penalty for failure to file a return and pay the monthly remittance by the due date is twenty percent (20%) of the tax for each thirty (30) days or a fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the tax; however, in no case shall the penalty be less than twenty percent (20%) of the tax.

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(E) Interest at the rate of twenty percent (20%) per annum will apply to any late payments.

(Ord. 21-88, passed 11-28-88; Am. Ord. 7-98, passed 7-13-98)

Statutory reference:

Regulatory license fee, see KRS 243.075

§ 114.34 REPORT OF WHOLESALER.

Every wholesaler of alcoholic beverages who sells within the city shall report to the Finance Director of the city, on a form to be provided by the Finance Director, the following information:

(A) The names of all retailers to whom alcoholic beverages were sold in the preceding quarter;

(B) The gross revenues received by the wholesaler from each retailer; and

(C) The total quantity of alcoholic beverages sold to each retailer in cans, cases, or kegs, as appropriate, provided that the information provided to the Director of Finance is calculated to permit the Director of Finance to determine the quantities of cases, cans, and kegs received by each retailer.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.40 HOURS.

Premises licensed under this chapter may remain open for business daily from 9:00 a.m. until 2:00 a.m. prevailing time, and shall have their last call for drinks at 1:30 a.m., except that no sale of alcoholic beverages by the drink may be made from 1:00 a.m. on Sunday until 9:00 a.m. on Monday, and said licensed premises shall not sell any alcoholic beverages on Christmas Day (December 25), nor on any election day during the time when the polls are open. All persons except for employees, agents, or licensees shall be off the premises no later than one hour after the close of sales. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

Statutory reference:

Authority to regulate hours of sale, see KRS 244.480

§ 114.41 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 City ABC Administrator in regard thereto; all provisions of the state statutes and the rules and regulations of the State Alcoholic



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Beverage Control Board in regard to the licensed 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.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.42 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.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.43 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 eleven (11) inches in size with the following message printed or displayed thereon in thirty (30) point or larger type:

"Persons under the age of twenty-one (21) years are subject to a fine up to five hundred dollars (\$500) if they:

a. Enter licensed 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 licenses 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.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

Statutory reference:

Display of state license required, see KRS 243.620, 244.270, and 244.360

§ 114.44 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 law, rule, or regulation of any governmental agency having jurisdiction thereof or any officer or agency thereof. Any such conduct upon the licensed premises by any person may result in the immediate revocation or suspension of the license, and may subject the licensee to other penalties as more specifically set out hereafter. (Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.45 BUSINESS TO BE CONDUCTED CONTINUOUSLY; EXCEPTIONS.

(A) A city licensee who has a valid city wholesale or retail distilled spirits, wine, or malt beverage license must conduct the actions, business, and transactions authorized thereby upon the licensed premises.

(B) When no such actions, business, or transactions are conducted thereon for a period of 90 consecutive calendar days, the city license therefor shall become null and void and revoked by the City ABC Administrator unless:

(1) The city licensee is unable to continue in business at the premises for which a license is issued due to an act of God; casualty; the acquisition of the premises by any federal, state, city, or other governmental agency under power of eminent domain; acquisition of any private corporation through its power of eminent domain granted to it, whether such acquisition is voluntary or involuntary; or loss of lease through failure of the landlord to renew the existing lease; and

(2) Prior to the discontinuance of business at the licensed premises or immediately thereupon if such is due to an act of God, the city licensee delivers to the City ABC Administrator a written statement signed by the city licensee and verified by the oath or affirmation thereof indicating the discontinuance of business at the licensed premises for any of the causes or reasons described herein. (Ord. 21-88, passed 11-28-88)



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§ 114.46 SALES TO BE CONDUCTED OPENLY.

No person holding a license under the provisions of this chapter shall sell any alcoholic beverages behind blinds or screens. All sales shall be conducted openly and without any attempt to hide them or screen them from public view.

(Ord. 21-88, passed 11-28-88) Penalty, see § 114.99

§ 114.47 CONDITIONS, PROHIBITIONS, AND RESTRICTIONS.

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

(A) Every licensed hotel, motel, or inn shall be entitled to serve such beverages as said licensee is entitled to serve upon the issuance of a license under this chapter and in such room or rooms at banquets, dinners, and where meals are served; however, no hotel, motel, or inn shall maintain or operate or permit to be operated more than one bar or room where alcoholic beverages are sold which is open to the general public without first obtaining a separate license for each bar or room which is open to the general public in accordance with this chapter.

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

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

(D) It shall be unlawful for any licensee licensed under this chapter to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from the City Police Radio Station as it is now or may hereinafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or City Administrator shall have the authority to confiscate any and all such radio receiving apparatus.

(E) It shall be unlawful for any licensee under this chapter to sell, to smoke, or to keep or permit to be sold, smoked, or kept upon the licensed premises any marijuana or controlled substances as defined in KRS Chapter 218A. It shall be unlawful for a licensee, except licensed drug stores, to keep or sell or permit to be sold or used on the licensed premises any narcotic or barbituate drugs. In addition to other penalties set out in this chapter for the violation of this section, the City ABC Administrator shall also have the authority to revoke the license issued to said premises.



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(F) The licensee shall be responsible for maintaining security on his premises which shall include 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 premises. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

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

(H) It shall be unlawful for any licensee under this chapter to give away or offer to give away anything tangible of value as a premium or prize in connection with the sale of alcoholic beverages.

(I) 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.

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

(K) No person under 21 years of age shall enter any premises that is licensed for the sale of alcoholic beverages by the drink for the purpose of purchasing and receiving any alcoholic beverages. No person under 21 years of age shall possess for his or her own use, or purchase or attempt to purchase or have another purchase for him or her, any alcoholic beverage by the drink; no person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages by the drink; no person under 21 years of age shall misrepresent his or her age for the purpose of inducing any licensee or other employee to sell or serve any alcoholic beverages to such person. No person under 21 years of age shall use or attempt to use any false, fraudulent, or altered identification card or paper or any document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

(Ord. 21-88, passed 11-28-88)



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## ADMINISTRATION AND ENFORCEMENT

§ 114.65 ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR.

As required by KRS 241.160 and as set forth in § 31.40, the office of Alcoholic Beverage Control Administrator, also known as the City ABC Administrator, is hereby established.

§ 114.66 RIGHT OF ENTRY; SEARCH AND SEIZURE.

Every applicant procuring a license hereby consents to the entry of police or other duly authorized representatives of the city or state at all reasonable hours for the purpose of inspection and search, and consents to the removal from the premises of all things and articles there had in violation of city ordinances or state laws, and consents to the introduction of those things and articles in evidence in any prosecution that may be brought for those offenses.  
(Ord. 21-88, passed 11-28-88)

§ 114.67 SUSPENSION, 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 City ABC 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 Beverage Control Board in regard thereto; or

(3) Any other cause, reason, or circumstance for which a state license may be revoked or suspended by the Board.

(B) However, city licenses must be revoked by the City ABC 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 City ABC Administrator, a licensee may, as an alternative and in lieu of part or all of the days of any suspension period, pay the following sums to the city as set forth in KRS 243.480: distillers, rectifiers, vintners, brewers, and blenders: \$1000 per day; wholesale liquor licensees: \$400 per day; wholesale beer licensees: \$100 per day; retail drink liquor licensees: \$25 per day; retail package liquor licensees: \$25 per day; retail beer licensees: \$10 per day; and all remaining licensees: \$10 per day.

(C) The procedure for the revocation or suspension of a city license shall consist of a written notice signed by the City ABC Administrator and mailed to the licensee at the address of the licensed

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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 City ABC Administrator in the city and according to the procedure prescribed by the State Alcoholic Beverage Control Board for hearings by the Board as supplemented by the regulations of the City ABC Administrator. The City ABC 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 City ABC Administrator shall issue a written decision in regard thereto and mail a certified copy thereof to the licensee at the address of the licensed premises by certified or registered mail.

(Ord. 21-88, passed 11-28-88)

§ 114.99 PENALTY.

The following penalties shall be in addition to any criminal prosecution instituted in the Floyd District or Circuit Court against any alleged violator and fines hereunder shall be payable to the City ABC Administrator:

(A) Any person, firm, or corporation that holds a license for the retail sale of alcoholic beverages who knowingly provides, by sale or gift, directly or indirectly, alcoholic beverages for the use or consumption by anyone under the age of 21 years, shall for the first offense be fined in the sum of \$500, and shall have his license suspended for a period of seven days; and for the second offense, his license shall be suspended for a period of 14 days, and he shall forfeit his bond made at application for the license; and for the third offense, he shall be subject to a fine of \$2,000 and revocation of his license.

(B) Any person 21 years of age or older, not being a licensee, who shall provide, by sale or gift, alcoholic beverages for the use and consumption by person or persons under the age of 21 years shall be fined, for each offense, the sum of \$500.

(C) Any person who violates any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than \$10 nor more than \$500, or imprisoned in the county jail for not more than six months, or both.

(Ord. 21-88, passed 11-28-88)