

City of Russell, Kentucky  
Ordinance No. 13, 2014

AN ORDINANCE REGULATING THE APPLICATION FOR AND SALES OF ALCOHOLIC BEVERAGES  
AND ESTABLISHING LICENSES AND FEES.

SUMMARY  
ARTICLE 112.01 – 112.03

Sets forth the purpose, definitions, scope of the ordinance. Adopts KRS Chapter 241-244 as applicable to the ordinance.

Article 112.04 – Licenses

Establishes types of Licenses. Makes finding of economic hardship and establishes a retail drink license and a regulatory license fee pursuant to KRS 242.185 (1)-(5); Establishes the following license fees:

DISTILLED SPIRITS AND WINE LICENSE FEES. The following distilled spirits and wine licenses may be issued by the City, the fees for which shall be:

(i) Distiller's license, per annum	\$ 500.00
(ii) Rectifier's license, per annum	\$3,000.00
(iii) Wholesaler's distilled spirits and wine license, per annum	\$3,000.00
(iv) Quota retail package license, per annum	\$1,000.00
(v) Special temporary license, per event	\$ 166.66
(vi) Non-quota type 1 retail drink license, per annum	\$2,000.00
(vii) Non-quota type 2 retail drink license, per annum	\$1,000.00
(viii) Non-quota type 3 retail drink license, per annum	\$ 300.00
(ix) Distilled spirits and wine special temporary auction license, per event	\$ 200.00
(x) Special Sunday retail drink license, per annum	\$ 300.00
(xi) Extended hours supplemental license, per annum	\$ 200.00
(xii) Caterer's license, per annum	\$ 800.00
(xiii) Bottling house or bottling house storage license, per	

Annum		\$1,000.00
Malt beverage licenses:		
(i)	Brewer's license, per annum	\$ 500.00
(ii)	Microbrewery license, per annum	\$ 500.00
(iii)	Malt beverage distributor's license, per annum	\$ 400.00
(iv)	Non-quota retail malt beverage package license, per annum	\$ 200.00
(v)	Non-quota type 4 retail malt beverage drink license, per annum	\$ 200.00
(vi)	Malt beverage brew-on premises license, per annum	\$ 100.00
(vii)	Limited restaurant license, per annum	\$1,200.00

Caterer's license.

Article 112.05 – 112.13

Establishes ABC Administrator, hours for sale and delivery, conditions, prohibitions and restrictions, enforcement; investigation and inspection of premises, mandatory responsible beverage service training, signs and advertising, implementation, severability and effective date.

Article 112.25

Establishes fees mentioned above and details application.

Article 112.26 – 112-38

Establishes refund of license fee, lost or destroyed license, revocation or suspension and hearing, notice to licensee; surrender of license; hearing, transfer or assignment, refusal of license, review of license, regulatory license fee, change of information, dormancy, approval of premises, delinquent taxes or fees, books, records, reports.

Article

Establishes monetary penalty in lieu of suspension;

- |   |                    |
|---|--------------------|
| 1) Distillers, rectifiers, wineries, and brewers          | \$1,000.00 per day |
| 2) Wholesale liquor licensees                             | \$ 400.00 per day  |
| 3) Wholesale beer licensees                               | \$ 400.00 per day  |
| 4) Retail licensees authorized to sell distilled spirits, |                    |

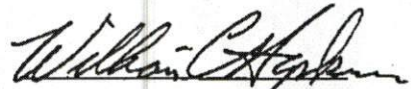
wine or beer by the package or drink	\$ 400.00 per day
5) All remaining licensees	\$ 400.00 per day

Article 114.01

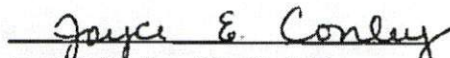
**REPEALING ORDINANCE #1, 2009.**

The full text of Ordinance #13, 2014 is available for examination at the Russell City Building, 410 Ferry Street, Russell, Kentucky 41169.

Dated this 17<sup>th</sup> day of November, 2014.

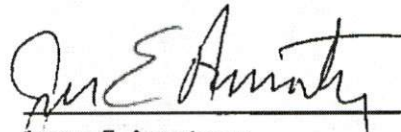
  
William C. Hopkins, Mayor

Attest:

  
Joyce E. Conley, City Clerk/Treasurer

First Reading and Adoption: October 27, 2014  
Second Reading and Adoption: November 17, 2014  
Published: November 21, 2014

I, James E. Armstrong, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky. My Office is located at 205 Harrison Street, Greenup, KY 41144. I further certify the foregoing Summary of Ordinance #13, 2014, of the City of Russell, Kentucky, was prepared in accordance with the requirements of the Kentucky Revised Statutes and is a true and accurate summary of the contents of said Ordinance.



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Attorney at Law

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**City of Russell, Kentucky**

**Ordinance No. 13, 2014**

**AN ORDINANCE REGULATING THE APPLICATION FOR AND SALES OF ALCOHOLIC BEVERAGES AND ESTABLISHING LICENSES AND FEES.**

**BE IT ORDAINED BY THE CITY OF RUSSELL:**

**112.01 PURPOSE.**

The purpose of this chapter is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage sales pursuant to KRS Chapter 242-244.

**112.02 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 State Alcoholic Beverage Control Law (KRS Ch. 241, 242, 243 and 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.

**112.03 SCOPE.**

(A) This chapter shall apply to the sale of malt beverages, wine and distilled spirits on any premises or establishment within the city. The sale of malt beverages, wine and distilled spirits on any premises or establishment within the city pursuant to a license issued by the Department of Alcoholic Beverage Control shall be governed by the applicable state statutes; however, the provisions of this chapter shall apply to all persons, licensees, premises and establishments within the city to the fullest extent such application is delegated to the city, or otherwise authorized, by the provisions of KRS Ch. 241 through 244. Nothing in this chapter shall excuse or relieve the licensee, or the agent or any employee of any licensee thereof from the restrictions, requirements and penalties of any other ordinance or ordinances of the City or of any statutes of the Commonwealth relating to violations pertaining to alcoholic beverages.

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

**112.04 LICENSES.**

Under the chapter, a license shall be issued by the City only to the owners and/or operators of those establishments which qualify for licenses applicable to City of Russell pursuant to KRS Chapter 243. Whenever any person or entity seeks of a license from the Department of Alcoholic Beverages Control to manufacture or traffic in alcoholic beverages within the City pursuant to some other provision of KRS Ch. 241 through 244, such state applicant shall apply to the city for any applicable city license for the

privilege of manufacturing and/or trafficking in alcoholic beverages within the city. City license fees, whether primary or supplemental shall be assessed in accordance with KRS 243.070 and 112.25 through 112.38 of this chapter. Regulatory license fees shall be assessed in accordance with KRS 243.075 and 112.25 through 112.38 of this chapter.

#### **112.05 ABC ADMINISTRATOR.**

(A) Tim Wilson, Sr. (Police Chief) shall serve as the city Alcoholic Beverage Control Administrator (hereinafter referred to as "City ABC Administrator").

(B) 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 this chapter.

(C) The salary for the Office of the 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.

(D) 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 (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. (nullified by ct. case).

(E) No person shall be a City ABC Administrator, an investigator or an employee of the city under the supervision of the City ABC Administrator, who would be disqualified to be a member of the ABC Board under KRS 241.100.

(F) The City ABC Administrator shall have all authority as authorized under KRS Ch. 241 through 244.

(G) 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, has a criminal record, he or she shall have the authority to require such person to appear in person at the City Police Department for the purpose of having his or her fingerprints taken.

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

(I) (1) Appeals from the orders of the City ABC Administrator may be taken to the State ABC Board by filing with the Board within 30 days a certified copy of the orders of the City ABC Administrator.

(2) Matters at issue shall be heard by the Board as upon an original proceeding.

(3) Appeals from orders of the City ABC Administrator shall be governed by KRS Ch. 13B.

#### **112.06 HOURS FOR SALE AND DELIVERY.**

(A) The licensee shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages Monday through Saturday between the hours of 6:00 a.m. and 12:00 midnight and on Sunday from 12:00 p.m. until 12:00 midnight.

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

(C) The licensee may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m. on January 1, regardless of the day of the week on which New Year's Eve occurs; provided that, the appropriate licenses have been obtained from both the city and the State ABC Board. Alcoholic beverages may be sold and dispensed until 2:00 a.m. on January 1.

#### **112.07 CONDITIONS, PROHIBITIONS AND RESTRICTIONS.**

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

(B) (1) 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 any law enforcement agency in the county as it is now or may hereafter be operated.

(2) In addition to other penalties provided for the violation of this section, the City ABC Administrator, or his or her designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

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

(D) 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 malt beverages.

(E) No quota retail package licensee shall permit any alcoholic beverages to be consumed on the licensed premises, unless it holds an additional license authorizing the same.

(F) 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.

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

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

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

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

(I) (1) The licensee, before commencing any business for which a license has been issued, shall post and display at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license.

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

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

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

(L) 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 or credit card at time of purchase.

(M) (1) 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 years unless permitted by KRS 244.090 (2);

(b) Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two years; unless permitted by KRS 244.090 (2).

(c) Is under the age of 21 years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined under statute; and

(d) Within two years prior to the date of his employment, has had any city license under this chapter revoked for cause.

(2) Violation of this division (M) shall, subject both employer and employee to penalties provided in this chapter and shall be cause for revocation of license.

#### **112.08 ENFORCEMENT; INVESTIGATION AND INSPECTION OF PREMISES.**

(A) City police officers and the City ABC Administrator authorized and directed to enforce this chapter for alleged violations.

(B) The City ABC Administrator and along with any authorized law enforcement officer, may inspect any premises where alcoholic or malt beverages are manufactured, sold, stored or otherwise trafficked.

#### **112.09 MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING.**

(A) All persons employed in the selling and serving of alcoholic beverages shall participate in and complete a city-approved responsible beverage service training program. For a responsible beverage service training program to be approved by the city, it must effectively train its participants in the identification of false age documents and recognition of characteristics of intoxication. The city will not require enrollment in particular classes, but only that the training be obtained from a recognized program meeting the goals expressed in this chapter.

(B) All persons required to complete training under division (A) above shall complete that training within 60 days of the date on which the person first becomes subject to the training requirement. All persons completing the training required by this section shall be re-certified in responsible beverage service training from a program approved by the city not less than once every three years thereafter.

(C) The manager of the restaurant 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.

#### **112.10 SIGNS AND ADVERTISING.**

(A) All signage shall be in compliance with any and all other existing rules and regulations of the city and the Greenup County Joint Planning and Zoning Commission.

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



(C) It shall be unlawful for any person holding a license under this chapter to distribute to sell alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize or for any other purpose in connection with the sale of alcoholic beverages.

(D) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

#### **112.11 IMPLEMENTATION.**

From time to time, the City Council may by resolution or order promulgate such rules and regulations and may publish and utilize such forms and other documents as, in its discretion, may be necessary for the proper implementation of this chapter.

#### **112.12 SEVERABILITY.**

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

#### **112.13 EFFECTIVE DATE.**

This chapter is effective upon final reading and publication.

### **LICENSING PROVISIONS**

#### **112.25 FEES; APPLICATION.**

(A) (1) Before an application shall be considered, the applicant must publish a notice of its intent to apply for an alcohol beverage license in a newspaper meeting the requirements, of KRS Ch. 424.

(a) The advertisement shall state the name and addresses of the individual applicant, or members of a partnership or limited liability company if the applicant is either, as well as the name of the business and its address, or if the applicant is a corporation, the names and addresses of the principal office and directors of the corporation, as well as the name and addresses of the corporation itself, the location of the premises for which the license is sought, and the type of license for which application is made.

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

(2) All licenses granted under this chapter shall be approved by the City ABC Administrator. Applications for the issuance of new licenses and for renewals of existing licenses shall be in writing and upon the forms provided by the Department of the ABC Board and the city, as amended and supplemented from time to time.

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

1. Name and address;
2. Nature of interest;
3. Whether or not a citizen of the United States;
4. Date of birth;
5. Date residence was established in Kentucky, if a resident of the state. If a city resident, indicate when residence was established;
6. Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this chapter;
7. Extent of stock ownership; and
8. Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

(b) Each application shall be accompanied by a certified check, cash or a postal or express money order for the license fee.

(4) 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.

(5) All city licenses shall be in such form as may be prescribed by the City Council and shall contain:

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

(6) All licenses approved by the City ABC Administrator and issued by the City shall begin on July 1 of any year and shall expire on June 30 of the following year.

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

(8) Any licenses issued after December 31 of any year shall be assessed a fee which is based on the pro rata portion of the remainder of the license period. However, the cost of any license shall not be less than that for a period of six months.

(9) In the event a violation of this chapter occurs that requires the revocation of the license, the city shall not be required to refund any portion of the license fee.

(B) (1) There is hereby imposed upon each holder of a license to manufacture and/or traffic in alcoholic beverages, under any provision of KRS Ch. 241 through 244, a license fee for the privilege of manufacturing and/or trafficking in alcoholic beverages within the city, as follows:

(a) Distilled spirit and wine licenses:

(i) Distiller's license, per annum	\$ 500.00
(ii) Rectifier's license, per annum	\$3,000.00
(iii) Wholesaler's distilled spirits and wine license, per annum	\$3,000.00
(iv) Quota retail package license, per annum	\$1,000.00
(v) Special temporary license, per event	\$ 166.66
(vi) Non-quota type 1 retail drink license, per annum	\$2,000.00
(vii) Non-quota type 2 retail drink license, per annum	\$1,000.00
(viii) Non-quota type 3 retail drink license, per annum	\$ 300.00
(ix) Distilled spirits and wine special temporary auction license, per event	\$ 200.00
(x) Special Sunday retail drink license, per annum	\$ 300.00
(xi) Extended hours supplemental license, per annum	\$ 200.00
(xii) Caterer's license, per annum	\$ 800.00
(xiii) Bottling house or bottling house storage license, per Annum	\$1,000.00

; Caterers may be issued a caterer's license as a supplementary license, provided that the caterer holds a retail package liquor license or distilled spirits and wine or a limited restaurant license. See KRS 243.033 (1). Owners and/or operators of a restaurant which is open to the public and which does not have a retail package liquor license or a distilled spirits and wine by the drink retail license or a malt beverage license or a limited restaurant license shall not qualify for a caterer's license as a primary license. See KRS 243.033 (2). No publication is required for a supplemental caterer's license. See KRS 243.033 (1). However, an application must be filed with and approved by the City ABC Administrator. All approved applicants (whether for an alcoholic beverage license or a supplemental caterer's license) must also obtain a City business license.

(c) Malt beverage licenses:

(i)	Brewer's license, per annum	\$ 500.00
(ii)	Microbrewery license, per annum	\$ 500.00
(iii)	Malt beverage distributor's license, per annum	\$ 400.00
(iv)	Non-quota retail malt beverage package license, per annum	\$ 200.00
(v)	Non-quota type 4 retail malt beverage drink license, per annum	\$ 200.00
(vi)	Malt beverage brew-on premises license, per annum	\$ 100.00
(vii)	Limited restaurant license, per annum	\$1,200.00

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

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

The holder of a non-quota retail malt beverage package license may obtain a Non-quota type 4 malt beverage drink license for a fee of fifty dollars (\$50). The holder of a Non-quota type 4 malt beverage drink license may obtain a non-quota retail malt beverage license for a fee of fifty dollars (\$50).

(2) The City ABC Administrator shall transmit fees upon collection to the City Treasurer to be deposited into the appropriate designated account. City licenses shall be issued by the city ABC Administrator upon receipt of notice from the ABC Board Administrator of the formality of appeal or protest permitted upon such license pursuant to the provisions of KRS 243.360, and the fact the ABC Board Administrator has approved the applicant's state application.

**112.26 REFUND OF LICENSE FEE.**

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

#### **112.27 LOST OR DESTROYED LICENSE.**

When a license shall be lost or destroyed without fault on the part of the licensee or his or her agent or employee, a duplicate in lieu of the original license shall be issued by the City ABC Administrator after he or she shall be satisfied as to the facts; provided, however, that, the personal applying for said duplicate license shall pay a fee of \$10 for issuing said duplicate.

#### **112.28 REVOCATION OR SUSPENSION AND HEARING.**

(A) Any license may be revoked or suspended by the City ABC Administrator, or a licensee may in lieu of suspension on approval of the City ABC Administrator in the alternative pay in part or all of the days of any suspension period a sum in accordance with the schedule set forth in Paragraph (E) of this section, if the license shall have violated any of the provisions of KRS Ch. 241, 242, 243 or 244, or any rule or regulation of the ok ABC Board or of the Department of Revenue relating to the regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or if such licensee shall have violated or shall violate any act of Congress or any rule or regulation of any federal board, agency or commission, or this chapter now, heretofore or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors of any rules or regulations of the city heretofore in existence or authorized by the terms of KRS Ch. 241, 243 and 244 to be created, referred to, irrespective of whether the licensee knew of or permitted the violation of whether the violation was committed in disobedience of his or her instructions, or any such license may be revoked or suspended for any cause which the City ABC Administrator in the exercise of his or her sound discretion deems sufficient.

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

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

- (1) Conviction of the licensee or his or her agent or employee for selling any illegal beverages on the premises licensed;
- (2) Making any false, material statements in an application for a license;
- (3) If, within a period of two consecutive years, any licensee or any of his or her clerks, servants, agents or employees of the licensee shall have been convicted of two violations of the terms and provisions of KRS Ch. 241, 243 or 244 or any act heretofore or hereafter in effect relating to the regulation of the manufacture, sale

and transportation of alcoholic beverages or if within such period, any licensee or any of the clerks, servants, agents or employees of the license shall have twice been convicted of any felony or any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one such felony and one such misdemeanor;

- (4) Willful and deliberate failure or default of a licensee to pay an excise tax or any part thereof, or any penalties imposed by or under the provisions of any statutes, this chapter or acts of congress relative to taxation, or for a violation of any rules or regulations of the Department of Revenue made in pursuance thereof; and/or
- (5) 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.
- (6) Failure to pay when due any tax imposed by the City of Russell, Kentucky.

(D) In the event a citation for violation of any provision of this ordinance is issued, notification of the alleged violation shall be served in writing on the licensee by delivering a copy to the licensee's place of business in Russell, Kentucky and by mailing a copy by U.S. Mail, postage prepaid, to the licensee's address as shown on the application for a license, giving notice that licensee may, within seven (7) days of the date of notification, request an administrative hearing before the City ABC Administrator to determine the existence of a violation. The hearing shall be a trial type hearing with all parties having a right to counsel and all witnesses subject to cross-examination. Rules for administrative hearings as provided in KRS 13B shall apply. (Cities do not have to follow KRS 13B, if they do not want to.)

After the hearing is concluded within five (5) business days, the City ABC Administrator shall issue a finding of fact and decision.

Appeal from the decision of the city ABC Administrator shall be to the State ABC Board within thirty (30) days from the date of the City ABC Administrator decision. (See KRS 241.200.)

E. In the event of payment of a monetary penalty in lieu of suspension, the monetary penalties shall be:

- |   |                    |
|---|--------------------|
| 1) Distillers, rectifiers, wineries, and brewers  | \$1,000.00 per day |
| 2) Wholesale liquor licensees   | \$ 400.00 per day  |
| 3) Wholesale beer licensees   | \$ 400.00 per day  |
| 4) Retail licensees authorized to sell distilled spirits,<br>wine or beer by the package or drink | \$ 400.00 per day  |

5) All remaining licensees

\$ 400.00 per day

**112.29 NOTICE TO LICENSEE; SURRENDER OF LICENSE; HEARING.**

(A) (1) Within three days after any order of revocation of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section.

(2) The licensee shall at once surrender his or her license to the City ABC Administrator.

(3) If the revoked license is not forthwith surrendered by the licensee, the Chief of Police at the request of the City ABC Administrator shall immediately cause one of his or her officers to take physical possession of the license and return it to the City ABC Administrator.

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

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

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

**112.30 TRANSFER OR ASSIGNMENT.**

No license issued under this chapter shall be transferred or assigned either as to licensee or location, except with prior approval of the City ABC Administrator and not then until a payment of \$100 shall be made to the City ABC Administrator.

**112.31 REFUSAL OF LICENSE.**

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

(A) Causes for refusal to issue or renew a license and for suspension or revocation of a city license shall be the same as provided for state licenses according to KRS 243.450,

KRS243.490 and 243.500, as well as violation of any city ordinance regarding alcohol beverage licensing, sales or the administration thereof;

- (B) If the applicant has done any act for which a revocation of license would be authorized; and/or
- (C) If the applicant has made any false material statement in his or her application.
- (D) Failure to pay taxes (See KRS 243.490(2)).

#### **112.32 REVIEW OF LICENSE.**

Applicants to whom a license is issued which require certain food sales percentages, shall provide periodic information demonstrating compliance with the continuing requirement that the required percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly regulatory fee filings, in the event the 50% food requirements 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 year in determining whether or not the 50% minimum food requirement has been met.

#### **112.33 REGULATORY LICENSE FEE.**

(A) Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee upon the gross receipts of each and every person or entity licensed by the City ABC Administrator. The initial regulatory license fee shall be 5% of gross sales of alcoholic beverages.

(B) Payment of such regulatory fees shall be remitted to the City ABC Administrator and shall be held in a separate account maintained for the purposes of fully reimbursing the city for any estimated costs of any policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the city. The regulatory license fee shall be in addition to any other taxes, fees or license permitted by law; except that, a credit against a regulatory license fee in the city shall be allowed in any amount equal to any licenses or fees imposed by the city pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the tax returns approved for such use by the City Council. These returns and payments 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 days of the due date constitutes a violation and subject's licensee to suspension or revocation.

(D) Penalty for failure to file a return and pay quarterly remittance by the due date is 5% of the tax for each 90 days or fraction thereof. The total late filing penalty shall not exceed 25% of the tax; provided, however, that, in no case shall the penalty be less than \$10.

(E) Interest at the rate of 8% per annum will apply to any late payments.



(F) Annually, effective July 1 of each year commencing in 2015, the City Council shall review and establish the regulatory license fee for the ensuing year so as to conform to the requirements of this ordinance and KRS 243.075.

Prior to establishing the subsequent regulatory license fee, the Mayor shall cause the city's auditor to audit the regulatory license fee account to insure compliance with KRS 243.075, and in conjunction with the City Clerk, to recommend, based upon the experience of the prior fiscal year, a fee rate for the ensuing year.

The Auditor shall report his findings to the City Council and in addition to the regulatory license fee, recommend any action he deems necessary to insure compliance with KRS 243.075.

#### **112.34 CHANGE OF INFORMATION.**

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

(B) As used herein, the word CHANGE is construed to include any change in directors or officers of the corporation, or change in ownership of stock whereby any person secures 10% of the outstanding stock. Transfer of more than 10% of the total stock shall require approval by City ABC Administrator.

(C) (1) The following information will be required concerning any 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 the state. If a city resident, indicate when residence was established;
- (f) Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this act;
- (g) Extent of stock ownership; and
- (h) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

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

### **112.35 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 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 during a period of 90 days shall become null and void. At the expiration of the 90-day period, the license shall be surrendered to the City ABC Administrator.

(C) Except that, the provisions of division (A) above shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain, acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. Such licensee shall furnish to the City ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business prior to the expiration of the 90 days of inactivity, for any of the 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 thereunder within 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.

(D) All renewal licenses must be on file with the City ABC Administrator within 30 days prior to the expiration of the licenses for the preceding license period or the same shall be canceled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license prior due to construction, an act of God, casualty, death, the acquisition or threatened acquisition or these premises by any federal, state, city or other governmental agency or private corporation, possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease verified statement no less than 20, days from the expiration date of the license, setting forth these facts, and the City ABC Administrator is hereby authorized, to extend the time for filing of a renewal of such license for a reasonable length of time within the sound discretion of the City ABC Administrator; provided, however, such licensee shall pay a license fee from the expiration date of the former license or licenses. Said license fee shall not be payable until application is made for the transfer of said license to a new location.

### **112.36 APPROVAL OF PREMISES.**

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

**112.37 DELINQUENT TAXES OR FEES.**

(A) No license to sell alcoholic or malt beverages shall be granted or renewed to any person who is delinquent in the payment of any taxes or fees due the city at the time of the issuing the license; nor shall any license be granted or renewed to sell upon any premises or fees due the city.

(B) 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.

**112.38 BOOKS, RECORDS, REPORTS.**

(A) 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 acquired 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.

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

**114.01. REPEALING ORDINANCE #1, 2009.**

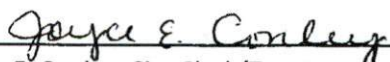
The existing Ordinance #1, 2009 comprising City of Russell, Kentucky Ordinance relating to licensing regulation and sale of alcoholic beverages is hereby repealed and replaced by this ordinance.

This Ordinance shall become effective upon its passage with two readings and publication.

Dated this 17<sup>th</sup> day of November, 2014.

  
William C. Hopkins, Mayor

Attest:

  
Joyce E. Conley, City Clerk/Treasurer

First Reading and Adoption: October 27, 2014

Second Reading and Adoption: November 17, 2014

Published: November 21, 2014

CITY OF RUSSELL

ORDINANCE NO. 1, 2009

AN ORDINANCE OF CITY OF RUSSELL, KENTUCKY, RELATED TO THE LICENSING OF RESTAURANTS AND DINING FACILITIES FOR THE SALE OF ALCOHOLIC BEVERAGES BY THE DRINK WHEN SUCH FACILITIES SEAT A MINIMUM OF ONE HUNDRED (100) PERSONS AND DERIVE A MINIMUM OF SEVENTY PERCENT (70%) OF GROSS RECEIPTS FROM THE SALE OF FOOD.

WHEREAS, KRS 242.185(6) authorizes, by petition in accordance with KRS 242.020, a City in which prohibition is in effect, to hold a local option election on the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat a minimum of one hundred (100) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food; and

WHEREAS, KRS 242.185(6) further authorizes the local government of a jurisdiction in which such alcoholic beverage sales are authorized to adopt regulations licensing such sales along with any other reasonable administrative regulations as may be necessary for the enforcement or administration of that statute; and regulations adopted pursuant to that authority shall conform to the requirements of KRS 241.140; and

WHEREAS, the local option election was conducted pursuant to KRS 242.185(6) and approved; and it is now the responsibility of the City of Russell (herein, "the City") to adopt regulations reasonably calculated to assure the sale of alcoholic beverages consistent with the legislative intent; and

NOW, THEREFORE BE IT ORDAINED by the City of Russell, Greenup County, Kentucky, as follows:

**SECTION ONE:** A new ordinance is hereby created to read as follows:

**ARTICLE 1. IN GENERAL**

Purpose:

The purpose of this Ordinance is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage sales pursuant to KRS 242.185(6), and other applicable law, for any restaurant or dining facility which seats a minimum of 100 persons and which derives a minimum of seventy (70%) percent of its gross receipts from the sale of food. To realize this intent, the City shall implement this Ordinance in such a manner as to assure that:

- (a) Restaurants and dining facilities licensed under this Ordinance shall seat a minimum of one hundred (100) persons. Only permanent seating, including bar-type stools and year-round patio seating, but not temporary chairs available only seasonally or as needed, satisfies this seating threshold. Said seating must comply with all fire and safety capacity ratings and regulations.

- (b) The sale of alcoholic beverages shall be accessory to the sale of food, offered only during times in which the licensee's kitchen and food service staff is on duty. Restaurants and dining facilities licensed under this Ordinance shall derive a minimum of seventy (70%) percent of their gross receipts from the sale of food as certified by periodic documentation.

Definitions:

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

Scope:

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

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

**ARTICLE II. LICENSES**

Scope:

Under this Ordinance a license shall only be extended to the owners and/or operators of those establishments which qualify under KRS 242.185(6). Caterer license, as authorized in KRS 243.033, may be issued to a Caterer that complies with the provisions of KRS 243.033 and the other provisions of this Ordinance.

**ARTICLE III. DUTIES OF THE OFFICE OF THE CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR.**

- (a) Mayor William C. Hopkins shall serve as the City Alcoholic Beverage Control Administrator (hereinafter referred to as City ABC Administrator), unless the Mayor shall appoint someone else to fill the position pursuant to KRS 241.110.
- (b) The City ABC Administrator may from time to time appoint such additional personnel as is necessary to assist him in the administration of this ordinance.

- (c) 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 Russell City Council.
- (d) 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 their regulations of the ABC Board. No regulation of the City ABC Administrator shall become effective until it has first been appropriately approved by the Russell City Council.
- (e) No person shall be a City ABC Administrator, an Investigator or an employee of the City under the supervision of the City ABC Administrator, who would be disqualified to be a member of the ABC Board under KRS 241.100
- (f) The City ABC Administrator shall have all authority as authorized under Chapters 241 through 244 of the Kentucky Revised Statutes.
- (g) 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, has a criminal record, he shall have the authority to require such person to appear in person at the offices of any state or local law enforcement agency in the County for the purpose of having his or her fingerprints taken.
- (h) 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).
- (i) 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. Matters at issue shall be heard by the Board as upon an original proceeding. Appeals from orders of the City ABC Administrator shall be governed by KRS Chapter 13B.

#### **ARTICLE IV. APPLICATION/LICENSE**

- (a) All licenses granted under this Ordinance shall be approved by the City ABC Administrator. Applications for the issuance of new licenses and for renewals of existing licenses shall be in writing and upon the forms provided by the ABC Board and the City of Russell, as amended and supplemented from time to time.
- (b) The application shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought as required by the Kentucky Revised Statutes, the ABC Board and the City of Russell, including as follows:

- (1) Name and address;
  - (2) Nature of interest;
  - (3) Whether or not a citizen of the United States;
  - (4) Date of birth;
  - (5) Date residence was established in Kentucky, if a resident of Kentucky. If Greenup resident, indicate when residence was established;
  - (6) Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this ordinance;
  - (7) Extent of stock ownership;
  - (8) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.
- (c) Each application shall be accompanied by a certified check, cash or a postal or express money order for the license fee.
- (d) 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.
- (e) All City licenses shall be in such form as may be prescribed by the Russell 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.
- (f) All licenses approved by the City ABC Administrator and issued by the City of Russell shall begin on July 1 of any year and shall expire on June 30 of the following year.
- (g) The renewal by the City ABC Administrator of the license shall not be construed to be a waiver or acceptance of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee.
- (h) Any licenses issued after January 1 of any year shall be assessed a fee which is based on the pro rata portion of the remainder of the license period. However, the cost of any license shall not be less than that for a period of six months.
- (i) In the event a violation of this ordinance occurs that requires the revocation of the license, the City shall not be required to refund any portion of the license fee.

Fees Pursuant to KRS 243.070:

- (a) The annual City License fee for the sale of wine, distilled spirits, and/or malt beverages shall be \$1,000.00. This fee may be amended from time to time if not inconsistent with the applicable state statutes.
- (b) The City ABC Administrator shall transmit fee upon collection to the City Finance Department to be deposited into the appropriate designated account. City Licenses shall be issued by the City ABC Administrator upon receipt of notice from the ABC Board Administrator of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 243.360, and the fact the ABC Board Administrator has approved the applicant's state application.

Fees Pursuant to KRS 243.075

**Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee upon the gross receipts of each person or entity licensed by the City ABC Administrator, whether under KRS 242.185(6) or under KRS 242.184(4) and Article II of this Ordinance. The regulatory fee shall be three and a half percent (3.5%) percent of gross sales of alcoholic beverages.**

Refund of License fees:

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

Lost or Destroyed Licenses:

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



Revocation or Suspension:

- (a) Any license may be revoked or suspended by the City ABC Administrator if the licensee shall have violated any of the provisions of Kentucky Revised Statutes Chapters 241, 243, or 244, or any rule or regulation of the ABC Board or of the department of revenue relating to the regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or if such licensee shall have violated or shall violate any act of congress or any rule or regulation of any federal board, agency or commission, or this Ordinance now, heretofore, or hereafter in effect, relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors or any rules or regulations of the City heretofore in existence or authorized by the terms of Kentucky Revised Statutes Chapters 241, 243 and 244 to be created, or referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any such license may be revoked or suspended for any cause which the City ABC Administrator in the exercise of his sound discretion deems sufficient.
- (b) A license may be revoked for any of the reasons for which the City ABC Administrator would have been required to refuse a license if the facts had been known.
- (c) Any license may be revoked or suspended for the following causes:
- (1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the premises licensed.
  - (2) Making any false, material statements in an application for a license.
  - (3) If within a period of two (2) consecutive years, any licensee or any of his clerks, servants, agents or employees of the licensee shall have been convicted of two (2) violations of the terms and provisions of KRS Chapter 241, 243 or 244 or any act heretofore or hereafter in effect to the regulation of the manufacture, sale and transportation of alcoholic beverages or if within such period, any licensee or any of the clerks, servants, agents or employees of the licensee shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one(1) such felony and one (1) such misdemeanor.
  - (4) Willful and deliberate failure to default of a licensee to pay an excise tax or any part thereof, or any penalties imposed by or under the provisions of any statutes, this Ordinance or acts of congress relative to taxation, or for a violation of any rules or regulations of the Department of Revenue made in pursuance thereof.
  - (5) 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.

Notice to Licensee: Surrender of License: Hearing:

- (a) Within three (3) days after any order of revocation of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section. The licensee shall at once surrender his license to the City ABC Administrator. If the revoked license is not forthwith surrendered by the licensee, the Sheriff, at the request of the City ABC Administrator, shall immediately cause one of his officers to take physical possession of the license and return it to the City ABC Administrator.
- (b) When a license has been revoked, the former licensee may, with prior approval of the City ABC Administrator, dispose of and transfer his stock of alcoholic beverages to an appropriate entity.
- (c) Appeal from the decision of the City Administrator shall be to the ABC Board.
- (d) If a license is revoked or suspended by an order of the City ABC Administrator, the licensee shall at once suspend all operations authorized under his license.

Transfer or Assignment:

No license issued under this Ordinance shall be transferred or assigned either as to licensee or location except with prior approval of the City ABC Administrator and not then until a payment of One Hundred Dollars (\$100.00) shall be made to the City ABC Administrator.

Refusal of License:

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

- (a) Causes for refusal to issue or renew a license and for suspension or revocation of a 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.
- (b) If the applicant has done any act for which a revocation of license would be authorized; or
- (c) If the applicant has made any false material statement in his application.

Review of License:

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

This documentation shall be provided on a schedule to be coordinated with the applicant's annual license renewal. In the event the 70% food requirement is not met during any particular period, 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 70% minimum food requirement has been met.

Change of Information:

- (a) For corporations which are holders of licenses issued by the City, stock ownership changes in such corporation consisting of 10% or more of the corporation's outstanding shares shall be reported to the City ABC Administrator. The City ABC Administrator shall investigate the person to whom the stock is transferred in order to ascertain whether that person is precluded by statute from holding an interest in an alcoholic beverage license.
- (b) Transfers of more than fifty percent (50%) of the total stock shall require a new license.
- (c) The following information will be required concerning any new shareholder of 10% or more of outstanding shares in a corporation holding an interest in alcoholic beverage license:

- (1) Name and address;
- (2) Nature of interest;
- (3) Whether or not a citizen of the United States;
- (4) Date of birth;
- (5) Date residence was established in Kentucky, if a resident of Kentucky. If a Greenup resident, indicate when residence was established;
- (6) Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this act;
- (7) Extent of stock ownership;
- (8) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

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

Dormancy:

- (a) Except as provided below, any license under which no business is transacted during a period of ninety (90) days shall become null and void. At the expiration of the ninety (90) day period the license shall be surrendered to the City ABC Administrator.

The provisions of subsection (a) above shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by any governmental agency under power of eminent domain (including when the acquisition is voluntary, or under threat of eminent domain), or loss of lease on the licensed premises. Within ninety (90) days of discontinuing use of the license, the licensee shall furnish to the City ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business prior to the expiration of the ninety (90) days of inactivity, and setting forth any of the reasons set forth herein. 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 sound discretion.

Renewal of License:

Applications for renewal of licenses shall be filed with the City ABC Administrator within (30) days prior to the expiration of the licenses for the preceding license period, except for excusable neglect. The fee for renewal shall be \$250.00

Approval of Premises:

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

Delinquent Taxes or Fees:

No license to sell alcoholic or malt beverages shall be granted or renewed to any person who is delinquent in the payment of any taxes or fees due the City at the time of the issuing of the license; nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are 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.

### Books, Records and Reports:

- (a) Every licensee under this Ordinance shall keep and maintain upon the licensed premises adequate books and records of all transactions involved in the sale of alcoholic beverages in the same manner required by the rules and regulations of the ABC Board. Such books and records shall be available at all reasonable times for inspections by the City ABC Administrator and such City employees who may assist the City ABC Administrator in his review.
- (b) For the purpose of assisting the City ABC Administrator in enforcement of this Ordinance, every licensee required to report to the ABC Board under KRS 243.850 shall provide a copy of such report to the City ABC Administrator. Copies of any and all reports and correspondences to the ABC Board required by Statute shall be furnished to the City ABC Administrator.

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

- (a) The licensee shall be permitted to sell or dispense distilled spirits, wine, and/or malt beverages by the drink Monday through Sunday between the hours of 6:00 a.m. and 2:00 a.m. There shall be no sales or dispensing of distilled spirits, wine and/or malt beverages by the drink on Sunday between the hours of 2:00 a.m. and midnight unless the licensee has first obtained a Special Temporary License from the City ABC Administrator, which shall specifically authorize the sale or dispensing of distilled spirits, wine and /or malt beverages by the drink on Sunday, but only between the hours of 2:00 p.m. and midnight. The fee for any such Special Temporary License shall be One Hundred Sixty Six and no/100 (\$166.00) Dollars as provided in KRS 243.060(1) (c) (2), and shall only be valid for the specific special event as authorized in the Special License by the city ABC Administrator.
- (b) The licensee shall not sell or dispense any distilled spirits, wine or malt beverages during the hours that the polls are open on any regular or primary election day.

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

- (a) No gambling or game of chance unless otherwise authorized by the Commonwealth of Kentucky shall be permitted in any form on such licensed premises. Dice, slot, machines, or any device of chance is prohibited and shall not be kept on such premises.
- (b) It shall be unlawful for any licensee licensed under this Ordinance to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from any law enforcement agency in Greenup County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Sheriff or the City ABC Administrator, or his designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

- (c) The licensee shall be responsible for maintaining security on his premises including providing adequate outside lighting to permit customers to utilize the parking area and to promote the safety, health and welfare of the general public utilizing the licensed premise. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.
- (d) It shall be unlawful for the licensee under this Ordinance who sells alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in direct connection with the sale of alcoholic beverages.
- (e) No licensee or agent or employee of the licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee permit any drunk or intoxicated person to remain on the licensed premises.
- (f) The licensee shall not sell or dispense alcoholic beverages to any person who is under 21 years of age.
- (g) The licensee shall display at all times in a prominent place a sign at least 8" x 11" in 30 point or larger type which states as follows:

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

- (1) Enter licensed premises to buy, or have served to them, alcoholic beverages.
  - (2) Possess, purchase or attempt, to purchase, or get another to purchase alcoholic beverages.
  - (3) Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.
- (h) The licensee, before commencing any business for which a license has been issued, shall post and display the license at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.
  - (i) The licensee shall post in a prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the Alcoholic Beverage Control Commission, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects. A person who violates this subsection shall be subject to a fine of not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00). KRS 243.895.

- (j) Any off premises signage advertising the sale of alcoholic beverages is prohibited.
- (k) No wholesaler or distributor shall sell any alcoholic beverages to any person in 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.
- (l) 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 employment, has had any City license under this Ordinance revoked for cause.

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

## ARTICLE VII. ENFORCEMENT

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

### Investigation and Inspection of premises:

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

### Penalties:

The following penalties shall be in addition to any criminal prosecution instituted in the City of Russell against an alleged violator and fines hereunder shall be payable to the city ABC Administrator.

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

Any person, firm, or corporation who violates any of the provisions of this Ordinance, for which no other penalty is hereby provided shall, for the first offense, be fined not less than One Hundred Dollars (\$100.00) nor more than two Hundred Dollars (\$200.00) or imprisoned in the Greenup County Detention Center for not more than six (6) months, or both, and for the second and each subsequent violation, he shall be fined not less than two hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or imprisoned in the Greenup County Detention Center for not more than six months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, joint stock company, association or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

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

- (a) All persons employed in the selling and serving of alcoholic beverages shall participate in and complete an employer-provided responsible beverage service training program, which must effectively train its participants in the identification of false age documents and recognition of characteristics of intoxication.
- (b) All persons required to complete training under paragraph (a) above shall complete that training within sixty (60) days of the date on which the person first becomes subject to training requirement. All persons completing the training required by this section shall be re-certified in responsible beverage service training not less than once every three years thereafter.
- (c) The manager of the restaurant 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.

#### **ARTICLE IX. SIGNS AND ADVERTISING**

- (a) All signage shall be in compliance with any and all other existing rules and regulations of the City of Russell and any applicable zoning regulations.
- (b) No signs, banners, posters, or other type of display advertising that refers either directly or indirectly to alcoholic beverages, shall be displayed on, nor shall it be visible from, the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business.
- (c) No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.
- (d) It shall be unlawful for a licensee under this chapter to distribute or cause to be distributed any handbills, circulars, or cards as a medium of advertising alcoholic beverages.
- (e) It shall be unlawful for any person holding a license under this chapter



to sell alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in connection with the sale of alcoholic beverages.

- (f) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

## ARTICLE X. IMPLEMENTATION OF ORDINANCE PROVISIONS

From time to time, City of Russell may by resolution or Order promulgate such rules and regulations and may publish and utilize such forms and other documents as in its discretion may be necessary for the proper implementation of this ordinance.

### SECTION TWO: SEVERABILITY

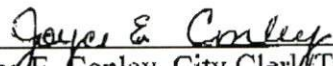
If any section, sentence, clause, or portion of this Ordinance is for any reason declared illegal, unconstitutional, or otherwise invalid, such declaration shall not affect the remaining portions thereof.

### SECTION THREE: EFFECTIVE DATE

Prohibition is lifted for the limited purpose hereinabove effective February 25, 2009.

  
William C. Hopkins, Mayor

Attest:

  
Joyce E. Conley, City Clerk/Treasurer

Date of First Reading: January 12, 2009  
Date of Second Reading: February 25, 2009  
Date of Publication: March 10, 2009