

CITY OF WHITESBURG
SUMMARY OF ORDINANCE # 2016-01

THE TITLE OF THE ORDINANCE IS: ALCOHOLIC BEVERAGE CONTROL ORDINANCE

THE PURPOSE OF THIS ORDINANCE IS TO ESTABLISH UNIFORM REGULATIONS AND REQUIREMENTS FOR THE LICENSING AND REGULATION OF ALCOHOLIC BEVERAGE MANUFACTURE AND SALES PURSUANT TO AUTHORIZATION OF KRS CH. 241 THROUGH 244 BY CONSOLIDATING AND UPDATING THE CITY'S ALCOHOLIC BEVERAGE CONTROL ORDINANCE, INCLUDING BUT NOT LIMITED TO, THE REPEALING OF ORDINANCES 2007-4; 2007-4A; AND 2015-5 AND REENACTING SAID REQUIREMENTS AND REGULATIONS AND UPDATES HEREIN.

Narrative Summary of Ordinance

Ordinance 2016-01 repeals and replaces prior ordinances pertaining to the manufacturing and trafficking in alcoholic beverages within the City of Whitesburg, including Ordinances 2007-4 and 2007-A and 2015-5. The ordinance takes effect at midnight June 30, 2016, by reenacting said requirements and regulations and updating same.

Ordinance 2016-01 provides for the incorporation of Kentucky state alcoholic beverage laws as set out in KRS Chapters 241-244 through December 31, 2015, and together with such statutes, relates to and regulates all sales of alcoholic beverages within the City of Whitesburg.

The ordinance reestablishes the office of the City Alcoholic Beverage Control Administrator and sets out the duties and prerogatives of said office. The ordinance sets out the types of licenses for the manufacture or traffic in alcoholic beverages which may be issued by the City of Whitesburg. It prescribes the form and process for license application state requirements and guidelines for consideration in granting licenses, sets out the requirements for maintaining licenses and prescribes how and for what cause licenses may be suspended or revoked. The ordinance requires all licensees to keep records and file reports with the City ABC Administrator. The City ABC Administrator may enter on the premises and inspect the records in order to determine whether the licensee is in compliance with the law.

The ordinance prescribes the hours during which alcoholic beverages may be sold and contains other conditions, prohibitions and restrictions on licensed premises, including without limitation the prohibition against unauthorized gambling, maintaining police scanners, sales to apparently intoxicated persons, sales to minors, prohibition of certain activities such as nude or nearly dancing, explicit sexual activity, either actual or simulated, wet t shirt contests, drinking contests and free drinks. The ordinance prohibits drive-through outlets for the sale of alcoholic beverages and prohibits congregating on certain ABC licensed premises and vacant premises.

Except where an ABC license expressly permits on premises consumption of alcohol, no on premises consumption is permitted. Those with appropriate licenses who intend to permit on premises consumption are required to notify the City ABC Administrator of that decision. Licensees who do not intend to permit on premises consumption are required to post conspicuous notice of the prohibition.

The ordinance requires registration and identification tags for all malt beverage kegs and sets conditions for patio and outdoor sales of alcoholic beverages. The ordinance contains certain signage requirements and some signage and advertising restrictions. It requires all persons selling or serving alcoholic beverages to received City approved training.

The ordinance provides for enforcement by City Police and by the City ABC Administrator and sets penalties for violation of the ordinance.

Full Text Of The Sections That Impose Or Change Taxes Or Fees (Article II)

Article IV Sec. 2.5-42 Application Fee. A nonrefundable application fee of \$50.00 shall be paid with the filing of the application for a city license. If the license is granted, the application fee shall be credited against the initial license fee.

Sec. 2.5-11 City Licenses. For the privilege of causing, permitting and engaging in the actions, business, and transactions authorized thereby in regard to traffic in alcoholic beverages in the 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 KRS 243.070. The fee for each city license shall be as set out in the following schedule. In the event KRS 243.070 shall hereafter be amended to authorize additional city licenses, the fee for each city license shall be the maximum fee provided in the statute as amended.

Sec. 2.5-12. City Licenses.

(1) Only those licenses set out in this section shall be issued. The license fees are subject to the provisions of subsections (16), (17), and (18) of this section and shall not exceed the amounts specified in subsections (2) to (15) of this section.

(2) Distilled spirit licenses as set forth in KRS 243.030 through 243.070

- a. Distiller's license, per annum\$500.00
- b. Rectifier's license, per annum..... \$3,000.00
- c. Wholesaler's distilled spirits and wine license per annum\$3,000.00
- d. . Quota retail package license, per annum \$1,000.00
- (3) Quota retail drink license per annum..... \$1,000.00
- (4) Special temporary license, per event\$166.66
- (5) Nonquota type 1 retail drink license (includes distilled spirits, wine, and malt beverages), per annum\$2,000.00
- (6) Nonquota type 2 retail drink license (includes distilled spirits, wine, and malt beverages), per annum..... \$1,000.00
- (7) Nonquota type 3 retail drink license (includes distilled spirits, wine, and malt beverages), per annum..... \$300.00
- (8) Distilled spirits and wine special temporary auction license, per event..... \$200.00

- (9) Special Sunday retail drink license, per annum\$300.00
- (10) Extended hours supplemental license, per annum\$2,000.00
- (11) Caterer's license, per annum..... \$800.00
- (12) Bottling house or bottling house storage license, per annum \$1,000.00
- (13) Qualified historic site license (includes distilled spirits, wine and malt beverages
by the drink) per annum.....\$1030.00
- (14) Malt beverage licenses as follows:
 - a. Brewer's license, per annum \$500.00
 - b. Microbrewery license, per annum \$500.00
 - c. Malt beverage distributor's license, per annum\$400.00
 - d. Nonquota retail malt beverage package license, per annum..... \$200.00
 - e. Nonquota type 4 retail malt beverage drink license, per annum \$200.00
 - f. Malt beverage brew-on-premises license, per annum..... \$100.00
- (15) Limited restaurant license (includes distilled spirits, wine, and malt beverages, per annum..\$1200.00
- (16) Limited golf course license (includes distilled spirits, wine, malt beverages), per annum..... \$1,200.00
- (17) The fee for the following license types may not be increased by more than five percent (5%) above
the January 1, 2016, fee for the current license or the former license type listed beside it during any five
(5) year period. The fees for the licenses described in this subsection are still subject to the maximum
amounts listed for those licenses in subsections (2) to (15) of this section:
 - a. Quota retail package license: retail package liquor licenses;
 - b. Quota retail drink license: retail drink License;
 - c. Nonquota type 1 retail drink license: convention center or convention hotel complex license;
 - d. Nonquota type 2 retail drink license: restaurant drink licenses;
 - e. Nonquota retail malt beverage package license: retail malt beverage license;
 - f. Nonquota type 4 retail malt beverage drink license: retail malt beverage license;
 - g. Limited restaurant; and
 - h. Limited golf course license.
 - i. Qualified historic site license

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

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

Sec. 2.5-15 Certain Special Licenses Defined.

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

(b) A nonprofit organization holding an NQ4 retail malt beverage drink license may be issued a special temporary license to sell distilled spirits and wine by the drink on the licensed premises for a specified and limited time, not to exceed ten (10) days. The temporary license may be issued in conjunction with any public or private event, including but not limited to weddings, receptions, reunions, or similar occasions.

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

Sec. 2.5-16. Expiration of license; proration of fees.

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

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

Sec. 2.5-17. Payment of license fees; delinquency.

No licensee shall enter into or begin operating any business for which a license is required by this ordinance until the license fee has been paid in full. The fee for renewal of any license shall be paid with the renewal application. Failure to pay any license fee within ten (10) days after it becomes due shall result in a penalty equal to ten percent (10%) of the license fee. Any licensee failing to pay the fees,

including penalties, within ten (10) days after such fees are due may be subject to revocation of the license and to other penalties as provided in Sec. 2.5-131 of this ordinance.

Sec. 2.5-18 Refund of Fees.

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

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

Sec. 2.5-19 Regulatory license fee.

a) The City Council of the City of Whitesburg, pursuant to KRS 242.185, has determined that economic hardship exists within the City, as is evidenced by its high rate of unemployment, slow rate of growth, job losses in the oil and gas industry, a wide reaching shut down in the coal mining industry and a significant number of vacancies in existing commercial buildings in the City. The City Council has further determined that the licensing authorization contained in subsections "B" and "C" of this Section could aid economic growth. Further, the City Council adopts this Ordinance, i.e. the "Alcoholic Beverage Ordinance of the City of Whitesburg" as a comprehensive, regulatory ordinance covering inter alla, the licensing and operation of hotels, motels, inns and restaurants for the sale of alcoholic beverages by the drink for consumption on the premises.

(b) Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee on the gross receipts of sale of alcoholic beverages of each license issued by the City ABC Administrator. As of the time of adoption of this ordinance, the regulatory license fee shall be five percent (5%) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the regulatory license fee shall be four percent (4%) of gross sales. The regulatory license fee shall be three percent (3%) on gross retail sales of package malt beverages. Thereafter, the City Council shall adopt at the budget adoption for each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the city for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the city. Should the city fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed until such time as the City Council shall adjust the fee.

(c) Payment of such regulatory fee shall be remitted to the City ABC Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the city for the estimated cost of any additional policing, regulatory or administrative expense related to the sale of alcoholic beverages in the city. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, except that a credit against a regulatory license fee in the city shall be allowed in an amount equal to any license fee imposed by the city pursuant to KRS 243.070. Payment of the regulatory license fee shall

accompany the tax return approved for such use by the City Council. The return and payment are due no later than by the end of the month immediately following each calendar quarter.

(d) Failure to pay such quarterly remittance within ten (10) days of the due date constitutes a violation and subjects licensee to suspension or revocation.

(e) Penalty for failure to file a return and pay quarterly remittance by the due date is five percent (5%) of the tax for each ninety (90) days or fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than ten dollars (\$10.00).

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

Sec. 2.5-20. Disposition of fees.

The City ABC Administrator shall transmit fees upon collection to the City Finance Department to be deposited into the appropriate designated account.

ARTICLE V. HOURS FOR SALE AND DELIVERY

Sec. 2.5-61. Hours for sale and delivery.

(a) A licensee for distilled spirits, wine or malt beverages by the drink shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 6:00 a.m. on each day of the week and until midnight.

(b) A licensee licensed to sell distilled spirits, wine or malt beverages by the drink may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m. on January 1, provided that the appropriate licenses have been obtained from both the city and the state ABC Board.

(c) There shall be no Sunday Sales by any retail package distilled spirits and wine sales and package malt beverage licensee between the hours of 12:01 a.m. on Sunday and 6:00 a.m. on Monday.

(d) Sunday Sales: There shall be no Sunday sales by any licensee between the hours of 1:00 a.m. on Sunday and 6:00 a.m. on Monday.

Sec. 2.5-131. Penalties.

(a) In addition to any criminal prosecution instituted in Letcher District Court against an alleged violator, the City ABC Administrator may assess the fines and penalties authorized in KRS 243.480, including the per diem assessments for ongoing violations. Should the fines or penalties assessed by the state change under KRS 243.480, then the fines or penalties under this article shall be adjusted accordingly to mirror the fines or penalties imposed by state law. Payment of all fines shall be made to the City ABC Administrator who shall transmit said payments to the City Finance Department to be deposited in the appropriate designated account.

(b) 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 county jail 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 county jail for not more than six months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, LLC, joint stock Company, association or other business organization, or a fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

ATTORNEY'S CERTIFICATION

This Summary was prepared for publication in The Mountain Eagle by the undersigned, James D. Asher, Attorney and is certified pursuant to KRS 83A.060

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**CITY OF WHITESBURG in LETCHER COUNTY KENTUCKY
ORDINANCE NO. 2013- 03. ———**

**AN ORDINANCE AMENDING THE EXISTING ORDINANCE PERTAINING TO
ALCOHOLIC BEVERAGES, ORDINANCE 2012-05**

WHEREAS, the City Council of the City of Whitesburg deems it necessary and appropriate to amend its Ordinance 2012-05 pertaining to alcoholic beverages so as to incorporate the changes passed in Senate Bill 13 by the Kentucky General Assembly;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITESBURG, KENTUCKY, AS FOLLOWS:

SECTION ONE:

Article II, Sections 2.1.1, 2.1.2, and 2.1.3 of City of Whitesburg Ordinance 2012-05 are hereby deleted in their entirety and replaced with new sections 2.1.1, 2.1.2 and 2.1.3 to read as follows:

~~Sec. 2.1.1 DISTILLED SPIRITS AND WINE LICENSE FEES.~~ The following distilled spirits and wine licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS241-244 the fees for which shall be:

- ~~(1) Distiller's license, per annum \$ 500.00~~
- ~~(2) Rectifier's license, per annum 3,000.00~~
- ~~(3) Blender's license, per annum 3,000.00~~
- ~~(4) Wholesaler's license, per annum 3,000.00~~
- ~~(5) Retail package license, per annum 800.00~~
- ~~(6) Retail drink, motel drink, airport drink, restaurant drink or supplemental bar license, per annum 800.00~~
- ~~(7) Special temporary liquor license per event 130.00~~
- ~~(8) Restaurant wine license, per annum:~~
 - ~~(a) New applicants 600.00~~
 - ~~(b) Renewals 400.00~~

~~(9) Special Sunday sale retail drink license, per annum 300.00~~

~~(10) Special temporary wine license, per event 50.00~~

~~(11) Special temporary auction license, per event 200.00~~

~~(12) Nonresident special agent or solicitor's license, per annum 40.00~~

~~(13) Bottling house or wine storage license, per annum 1,000.00~~

~~(14) Souvenir retail liquor license, per annum 1,000.00~~

~~Sec. 2.1.2 MALT BEVERAGE LICENSE FEES~~ The following kinds of malt beverage licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241-244, the fees for which shall be:

~~The following kinds of malt beverage licenses may be issued by the city, the fees for which shall be:~~

~~(1) Brewer's license, per annum \$500.00~~

~~(2) Microbrewery license, per annum 500.00~~

~~(3) Distributor's license, per annum 400.00~~

~~(4) Retailer's license, per annum 200.00~~

~~(5) Special temporary license, per event 25.00~~

~~(6) Special Sunday malt beverage retailer's license, per annum N/A~~

~~(7) Brew on premises license, per annum 100.00~~

~~Sec. 2.1.3 OTHER LICENSE FEES~~ The following kinds of other licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241-244, the fees for which shall be:

~~(1) Convention center license, per annum \$2,000.00~~

~~(2) Extended hours supplemental license, per annum 2,000.00~~

~~(3) Horse race track license, per annum 2,000.00~~

~~(4) Caterer's license, per annum 800.00~~

~~(5) Riverboat license, per annum 1,200.00~~

~~(6) Automobile race track license, per annum 2,000.00~~

~~(7) Limited restaurant license or limited golf course license, per annum (includes distilled spirits, wine, and malt beverages) new applicants 1,000.00~~

~~(8) Special private club license, per annum 300.00~~

Sec. 2. DISTILLED SPIRITS AND WINE LICENSE FEES

(1) Only those licenses set out in this section shall be issued. The license fees are subject to the provisions of subsections (16), (17), and (18) of this section and shall not exceed the amounts specified in subsections (2) to (15) of this section.

(2) Distilled spirit licenses as set forth in KRS 243.030:

a. Distiller's license, per annum\$ 500.00

b. Rectifier's license, per annum . . . \$3,000.00

c. Wholesaler's distilled spirits and wine license, per annum.....\$3,000.00

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

(3) Quota retail drink license per annum.....\$1,000.00

(4) Special temporary license, per event.....\$166.66

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

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

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

(8) Distilled spirits and wine special temporary auction license, per event...\$200.00

(9) Special Sunday retail drink license, per annum.....\$300.00

(10) Extended hours supplemental license, per annum.....\$2,000.00

(11) Caterer's license, per annum.....\$800.00

(12) Bottling house or bottling house storage license, per annum.....\$1,000.00

(13) Malt beverage licenses as follows:

a. Brewer's license, per annum.....\$500.00

b. Microbrewery license, per annum...\$500.00

c. Malt beverage distributor's license, per annum....\$400.00

d. Nonquota retail malt beverage package license, per annum.....\$200.00

e. Nonquota type 4 retail malt beverage drink license, per annum... \$200.00

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

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

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

(16) The fee for the following license types may not be increased by more than five percent (5%) above the January 1, 2013, fee for the current license or the former license type listed beside it during any five (5) year period. The fees for the licenses described in this subsection are still subject to the maximum amounts listed for those licenses in subsections (2) to (15) of this section:

a. Quota retail package license: retail package liquor licenses;

b. Quota retail drink license: retail drink License;

c. Nonquota type 1 retail drink license: convention center or convention hotel complex license;

d. Nonquota type 2 retail drink license: restaurant drink licenses;

e. Nonquota retail malt beverage package license: retail malt beverage license;

f. Nonquota type 4 retail malt beverage drink license: retail malt beverage license;

g. Limited restaurant; and

h. Limited golf course license.

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

(18) The holder of a nonquota retail malt beverage package license may obtain a Nonquota type 4 malt beverage drink license for a fee of fifty dollars (\$50). The holder of a Nonquota type 4 malt beverage drink license may obtain a nonquota retail malt beverage package license for a fee of fifty dollars (\$50).

SECTION TWO:

Article Section 2.1.4 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

(1) Special Temporary licenses. A special temporary distilled spirits and wine license or a special temporary wine license may be issued only as set out in KRS. 243.260. This license shall authorize the licensee to exercise the privileges of a quota retail drink license and an NQ4 retail malt beverage licensee at designated premises the license for a specified and limited time, not to exceed thirty (30) days., and shall expire when the qualifying event ends. All restrictions and prohibitions applying to a distilled spirits and wine quota retail drink licensee or an NQ4 retail malt beverage drink license shall apply also to a special temporary licensee. In the case of a nonprofit organization holding a retail malt beverage license, such organization may be issued a distilled spirits and wine special temporary license or a special temporary wine license to sell distilled spirits and wine by the drink on the licensed premises, in conjunction with any public or

private event, for a specified and limited time, not to exceed ten (10) days. A malt beverage temporary license may be issued only as set out in KRS 243.290 and is subject to all conditions and regulations provided at the issuance of the license.

~~(2) Private club license. A special private club license may be issued only as authorized in KRS 243.270 to a nonprofit social, fraternal, military, or political organization or club, which for more than one (1) year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded. The privileges of the license shall be exercised only on premises where the general public is excluded.~~

(2) A nonprofit organization holding an NO4 retail malt beverage drink license may be issued a special temporary license to sell distilled spirits and wine by the drink on the licensed premises for a specified and limited time, not to exceed ten (10) days. The temporary license may be issued in conjunction with any public or private event, including but not limited to weddings, receptions, reunions, or similar occasions.

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

~~(4) All restrictions and prohibitions applying to regular retail drink distilled spirits and wine licenses and retail malt beverage licenses shall apply to the special licenses, unless otherwise provided by law.~~

SECTION THREE:

Article II, Section 2.2 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

EXPIRATION OF LICENSE; PRORATION OF FEES (a) All city licenses, except special temporary licenses, shall begin on June 1 of any year and shall be valid for a period of no more than one year expire on May 31 of the following year ~~expire on May 31 of the following year,~~ and shall begin and end on the dates specified by the Department of Alcoholic Beverage Control

Administrative Regulations for the City of Whitesburg. 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 one-half (1/2) the amount of the full fee for an annual license of that type. When any person applies for a new license authorized by KRS Chapter 241 to 244 and CDO Chapter 2.5 he or she shall be charged, if the license is issued, the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.

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

SECTION FOUR:

The header of Article IV, Section 4.13 along with Section 4.13.1 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

Sec. 4.13 REVIEW OF LICENSE; BOOKS, RECORDS, AUDIO AND VISUAL RECORDINGS, AND REPORTS

4.13.1 Applicants to whom a license is issued pursuant to this chapter shall provide periodic information demonstrating compliance with the conditions of any license, such as, but not limited to, the continuing requirement that a minimum percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly regulatory fee filings. The city shall provide the form schedule to the licensee. The licensee's acceptance of a license to manufacture or traffic in alcoholic beverages shall constitute consent to the filing of the quarterly report. In the case of caterer filing, the quarterly report shall identify each catered event by type of event, date

and address of the event, and shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales during the reporting period. This requirement for filing of reports notwithstanding, the city may at any time come upon the premises of any licensee and examine the books, audio and visual recordings, and records to determine whether the licensee is in compliance with all parts of this chapter. In the event the conditions of any license requirement are not met during any particular quarter, the City ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the City ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the food sale percentage requirement has been met.

SECTION FIVE:

Article V, Section 5.4 of the City of Whitesburg Ordinance 2012-05 is hereby deleted in its entirety as follows:

~~The licensee shall not sell or dispense any distilled spirits, wine or malt beverages during the hours that the polls are open on any election day.~~

SECTION SIX:

Section 6.16 shall be added to the City of Whitesburg Code of Ordinances and shall read as follows:

Sec. 6.16 Retail Premises Not to Be Disorderly - Per KRS 244.120

1. A retail licensee, a patron, or the licensee's agents, servants, or employees shall not cause, suffer, or permit the licensed premises to be disorderly.
2. Acts which constitute disorderly premises consist of causing, suffering, or permitting patrons, the licensee, or the licensee's servants, agents, or employees to cause public inconvenience, annoyance, or alarm, or create a risk through:

- a. Engaging in fighting or in violent, tumultuous, or threatening behavior;
- b. Making unreasonable noise;
- c. Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency;
- d. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;
- e. Creating a public nuisance which is further defined by KRS 241.010 (39);
- f. Engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor;
or
- g. Failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or local government, or by state administrative regulations, for the licensed premises.

SECTION SEVEN:

Article XII, Section 12.1 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

All persons employed in the selling and serving of alcoholic beverage shall complete a server training course provided by the Kentucky Department of Alcoholic Beverage Control. ~~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.~~

SECTION EIGHT:

This Ordinance is effective upon its publication.

SECTION NINE:

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

GIVEN FIRST READING AND PASSED NOV. 12, 2013

GIVEN SECOND READING AND PASSED Dec. 10, 2013

PUBLISHED BY THE MOUNTAIN EAGLE Dec. 11, 2013

APPROVED: James W. Craft
JAMES W. CRAFT, MAYOR
CITY OF WHITESBURG, KY

ATTEST:

Garnett R. Sexton
GARNETT SEXTON, CITY CLERK

CITY OF WHITESBURG in LETCHER COUNTY KENTUCKY
ORDINANCE NO. 2013-03

AN ORDINANCE AMENDING THE EXISTING ORDINANCE PERTAINING TO
ALCOHOLIC BEVERAGES, ORDINANCE 2012-05

WHEREAS, the City Council of the City of Whitesburg deems it necessary and appropriate to amend its Ordinance 2012-05 pertaining to alcoholic beverages so as to incorporate the changes passed in Senate Bill 13 by the Kentucky General Assembly;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITESBURG, KENTUCKY, AS FOLLOWS:

SECTION ONE:

Article II, Sections 2.1.1, 2.1.2, and 2.1.3 of City of Whitesburg Ordinance 2012-05 are hereby deleted in their entirety and replaced with new sections 2.1.1, 2.1.2 and 2.1.3 to read as follows:

~~Sec. 2.1.1 DISTILLED SPIRITS AND WINE LICENSE FEES.~~ The following distilled spirits and wine licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS241-244 the fees for which shall be:

- (1) Distiller's license, per annum \$ 500.00
- (2) Rectifier's license, per annum 3,000.00
- (3) Blender's license, per annum 3,000.00
- (4) Wholesaler's license, per annum 3,000.00
- (5) Retail package license, per annum 800.00
- (6) Retail drink, motel drink, airport drink, restaurant drink or supplemental bar license, per annum 800.00
- (7) Special temporary liquor license per event 130.00
- (8) Restaurant wine license, per annum:
 - (a) New applicants 600.00
 - (b) Renewals 400.00

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~~(9) Special Sunday sale retail drink license, per annum 300.00~~

~~(10) Special temporary wine license, per event 50.00~~

~~(11) Special temporary auction license, per event 200.00~~

~~(12) Nonresident special agent or solicitor's license, per annum 40.00~~

~~(13) Bottling house or wine storage license, per annum 1,000.00~~

~~(14) Souvenir retail liquor license, per annum 1,000.00~~

~~**Sec. 2.1.2 MALT BEVERAGE LICENSE FEES** The following kinds of malt beverage licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241-244, the fees for which shall be:~~

~~The following kinds of malt beverage licenses may be issued by the city, the fees for which shall be:~~

~~(1) Brewer's license, per annum \$500.00~~

~~(2) Microbrewery license, per annum 500.00~~

~~(3) Distributor's license, per annum 400.00~~

~~(4) Retailer's license, per annum 200.00~~

~~(5) Special temporary license, per event 25.00~~

~~(6) Special Sunday malt beverage retailer's license, per annum N/A~~

~~(7) Brew on premises license, per annum 100.00~~

~~**Sec. 2.1.3 OTHER LICENSE FEES** The following kinds of other licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241.—244, the fees for which shall be:~~

~~(1) Convention center license, per annum \$2,000.00~~

~~(2) Extended hours supplemental license, per annum 2,000.00~~

~~(3) Horse race track license, per annum 2,000.00~~

~~(4) Caterer's license, per annum 800.00~~

~~(5) Riverboat license, per annum 1,200.00~~

~~(6) Automobile race track license, per annum 2,000.00~~

~~(7) Limited restaurant license or limited golf course license, per annum (includes distilled spirits, wine, and malt beverages) new applicants 1,000.00~~

~~(8) Special private club license, per annum 300.00~~

Sec. 2. DISTILLED SPIRITS AND WINE LICENSE FEES

(1) Only those licenses set out in this section shall be issued. The license fees are subject to the provisions of subsections (16), (17), and (18) of this section and shall not exceed the amounts specified in subsections (2) to (15) of this section.

(2) Distilled spirit licenses as set forth in KRS 243.030:

a. Distiller's license, per annum\$ 500.00

b. Rectifier's license, per annum \$3,000.00

c. Wholesaler's distilled spirits and wine license, per annum.....\$3,000.00

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

(3) Quota retail drink license per annum.....\$1,000.00

(4) Special temporary license, per event.....\$166.66

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

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

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

(8) Distilled spirits and wine special temporary auction license, per event...\$200.00

- (9) Special Sunday retail drink license, per annum.....\$300.00
- (10) Extended hours supplemental license, per annum.....\$2,000.00
- (11) Caterer's license, per annum.....\$800.00
- (12) Bottling house or bottling house storage license, per annum.....\$1,000.00
- (13) Malt beverage licenses as follows:
- a. Brewer's license, per annum.....\$500.00
- b. Microbrewery license, per annum...\$500.00
- c. Malt beverage distributor's license, per annum....\$400.00
- d. Nonquota retail malt beverage package license, per annum.....\$200.00
- e. Nonquota type 4 retail malt beverage drink license, per annum... \$200.00
- f. Malt beverage brew-on-premises license, per annum.....\$100.00
- (14) Limited restaurant license (includes distilled spirits, wine, and malt beverages, per annum.....\$1,200.00
- (15) Limited golf course license (includes distilled spirits, wine, and malt beverages), per annum...\$1,200.00
- (16) The fee for the following license types may not be increased by more than five percent (5%) above the January 1, 2013, fee for the current license or the former license type listed beside it during any five (5) year period. The fees for the licenses described in this subsection are still subject to the maximum amounts listed for those licenses in subsections (2) to (15) of this section:
- a. Quota retail package license: retail package liquor licenses;
- b. Quota retail drink license: retail drink License;
- c. Nonquota type 1 retail drink license: convention center or convention hotel complex license;

d. Nonquota type 2 retail drink license: restaurant drink licenses;

e. Nonquota retail malt beverage package license: retail malt beverage license;

f. Nonquota type 4 retail malt beverage drink license: retail malt beverage license;

g. Limited restaurant; and

h. Limited golf course license.

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

(18) The holder of a nonquota retail malt beverage package license may obtain a Nonquota type 4 malt beverage drink license for a fee of fifty dollars (\$50). The holder of a Nonquota type 4 malt beverage drink license may obtain a nonquota retail malt beverage package license for a fee of fifty dollars (\$50).

SECTION TWO:

Article Section 2.1.4 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

(1) Special Temporary licenses. A special temporary distilled spirits and wine license or a special temporary wine license may be issued only as set out in KRS. 243.260. This license shall authorize the licensee to exercise the privileges of a quota retail drink license and an NQ4 retail malt beverage licensee at designated premises the license for a specified and limited time, not to exceed thirty (30) days., and shall expire when the qualifying event ends. All restrictions and prohibitions applying to a distilled spirits and wine quota retail drink licensee or an NQ4 retail malt beverage drink license shall apply also to a special temporary licensee. In the case of a nonprofit organization holding a retail malt beverage license, such organization may be issued a distilled spirits and wine special temporary license or a special temporary wine license to sell distilled spirits and wine by the drink on the licensed premises, in conjunction with any public or

private event, for a specified and limited time, not to exceed ten (10) days. A malt beverage temporary license maybe issued only as set out in KRS 243.290 and is subject to all conditions and regulations provided at the issuance of the license.

~~(2) Private club license. A special private club license may be issued only as authorized in KRS 243.270 to a nonprofit social, fraternal, military, or political organization or club, which for more than one (1) year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded. The privileges of the license shall be exercised only on premises where the general public is excluded.~~

(2) A nonprofit organization holding an NQ4 retail malt beverage drink license may be issued a special temporary license to sell distilled spirits and wine by the drink on the licensed premises for a specified and limited time, not to exceed ten (10) days. The temporary license may be issued in conjunction with any public or private event, including but not limited to weddings, receptions, reunions, or similar occasions.

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

~~(4) All restrictions and prohibitions applying to regular retail drink distilled spirits and wine licenses and retail malt beverage licenses shall apply to the special licenses, unless otherwise provided by law.~~

SECTION THREE:

Artcile II, Section 2.2 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

EXPIRATION OF LICENSE; PRORATION OF FEES (a) All city licenses, except special temporary licenses, shall ~~begin on June 1 of any year and shall be valid for a period of no more than one year expire on May 31 of the following year~~ expire on May 31 of the following year, and shall begin and end on the dates specified by the Department of Alcoholic Beverage Control

Administrative Regulations for the City of Whitesburg. 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 one-half (1/2) the amount of the full fee for an annual license of that type. When any person applies for a new license authorized by KRS Chapter 241 to 244 and CDO Chapter 2.5 he or she shall be charged, if the license is issued, the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.

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

SECTION FOUR:

The header of Article IV, Section 4.13 along with Section 4.13.1 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

Sec. 4.13 REVIEW OF LICENSE; BOOKS, RECORDS, AUDIO AND VISUAL RECORDINGS, AND REPORTS

4.13.1 Applicants to whom a license is issued pursuant to this chapter shall provide periodic information demonstrating compliance with the conditions of any license, such as, but not limited to, the continuing requirement that a minimum percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly regulatory fee filings. The city shall provide the form schedule to the licensee. The licensee's acceptance of a license to manufacture or traffic in alcoholic beverages shall constitute consent to the filing of the quarterly report. In the case of caterer filing, the quarterly report shall identify each catered event by type of event, date

and address of the event, and shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales during the reporting period. This requirement for filing of reports notwithstanding, the city may at any time come upon the premises of any licensee and examine the books, audio and visual recordings, and records to determine whether the licensee is in compliance with all parts of this chapter. In the event the conditions of any license requirement are not met during any particular quarter, the City ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the City ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the food sale percentage requirement has been met.

SECTION FIVE:

Article V, Section 5.4 of the City of Whitesburg Ordinance 2012-05 is hereby deleted in its entirety as follows:

~~The licensee shall not sell or dispense any distilled spirits, wine or malt beverages during the hours that the polls are open on any election day.~~

SECTION SIX:

Section 6.16 shall be added to the City of Whitesburg Code of Ordinances and shall read as follows:

Sec. 6.16 Retail Premises Not to Be Disorderly - Per KRS 244.120

1. A retail licensee, a patron, or the licensee's agents, servants, or employees shall not cause, suffer, or permit the licensed premises to be disorderly.

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

- a. Engaging in fighting or in violent, tumultuous, or threatening behavior;
- b. Making unreasonable noise;
- c. Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency;
- d. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;
- e. Creating a public nuisance which is further defined by KRS 241.010 (39);
- f. Engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor;
or
- g. Failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or local government, or by state administrative regulations, for the licensed premises.

SECTION SEVEN:

Article XII, Section 12.1 of the City of Whitesburg Ordinance 2012-05 is hereby amended to read as follows:

All persons employed in the selling and serving of alcoholic beverage shall complete a server training course provided by the Kentucky Department of Alcoholic Beverage Control. ~~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.~~

SECTION EIGHT:

This Ordinance is effective upon its publication.

SECTION NINE:

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

GIVEN FIRST READING AND PASSED Nov. 12, 2013

GIVEN SECOND READING AND PASSED Dec. 10, 2013

PUBLISHED BY THE MOUNTAIN EAGLE Dec. 11, 2013

APPROVED: James W. Craft
JAMES W. CRAFT, MAYOR
CITY OF WHITESBURG, KY

ATTEST:

Garnett R. Sexton
GARNETT SEXTON, CITY CLERK

CITY OF WHITESBURG in LETCHER COUNTY, KY
ABC ORDINANCE
ORDINANCE # 2012-05

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

Whereas the City of Whitesburg has in place certain ordinances pertaining to the manufacture and traffic in alcoholic beverages pursuant to authority of KRS 242.185(6) ("Limited Restaurant") and a local option election which became effective May 16, 2007; and

Whereas on June 26, 2012, a local option election was held pursuant to KRS 242.050, as a result of which election, effective August 29, 2012, expanded activities in the manufacture and traffic in alcoholic beverages will be permitted under the provisions of KRS Chapters 241-244; and

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

Whereas the City Council deems it prudent and appropriate to provide by ordinance for the licensing and regulation of all manufacturing and trafficking in alcoholic beverages, including the expanded activities authorized by the June 26, 2012 local option election, to provide additional protections by regulation for the benefit of the health, safety and welfare of the general public and of children and minors, in particular, and to provide for enforcement of the ordinance as hereinafter set out; and

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

Promoting economic health within the community;

Causing the revenue stream created by expanded sales and activities to have the maximum impact on the economic health of the City of Whitesburg and its business owners and citizens;

Providing expanded entertainment and cultural venues for local citizens and creating increased tourism traffic and activities;

Envisioning additions to our existing historic downtown district by the addition of small wine shops, food sales, bakeries, restaurants, cafes and like businesses;

Protecting our citizens and the character of our neighborhoods, as well as the entire community, from the extremes that may be associated with alcoholic beverage enterprises;

Recognizing that dollars spent with local businesses have an expanded multiplying effect on the revenue stream of the community; and

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

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

Now, therefore, be it ordained by the City Council of the City of Whitesburg:

ARTICLE I. IN GENERAL

Sec. 1.1 Title: This ordinance shall be known as the "Alcoholic Beverage Control Ordinance" of the City of Whitesburg, Kentucky (City).

Sec. 1.2 Purpose: The purpose of this ordinance is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage manufacture and sales pursuant to authorization of KRS 241 through 244.

Sec. 1.3 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.

Sec. 1.4 Scope: This ordinance shall be construed to apply to the manufacture and traffic in both malt beverages and distilled spirits and wine where the context permits such application. Nothing in this ordinance shall excuse or relieve the licensee, or the owner, proprietor, employee, agent or person in charge of any licensed premises where alcoholic beverages are sold from the restrictions, requirements and penalties of any other ordinance or ordinances of the City or of any statutes of the state relating to violations pertaining to alcoholic beverages.

Sec. 1.5 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; LICENSE FEES; REGULATORY LICENSE FEE; EXPIRATION OF LICENSE

Sec. 2.1 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 KRS 243.070. The fee for each city license shall be as set out in the following schedule. In the event KRS 243.070 shall hereafter be amended to authorize additional city licenses, the fee for each city license shall be the maximum fee provided in the statute as amended.

Sec. 2.1.1 **DISTILLED SPIRITS AND WINE LICENSE FEES.** The following distilled spirits and wine licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241-244, the fees for which shall be:

- (1) Distiller's license, per annum . . . \$ 500.00
- (2) Rectifier's license, per annum . . . 3,000.00
- (3) Blender's license, per annum . . . 3,000.00
- (4) Wholesaler's license, per annum . . . 3,000.00
- (5) Retail package license, per annum . . . 600.00
- (6) Retail drink, motel drink, airport drink, restaurant drink or supplemental bar license, per annum . . . 600.00
- (7) Special temporary liquor license per event . . . 100.00
- (8) Restaurant wine license, per annum:
 - (a) New applicants . . . 600.00
 - (b) Renewals . . . 400.00
- (9) Special Sunday sale retail drink license, per annum . . . 300.00
- (10) Special temporary wine license, per event . . . 50.00
- (11) Special temporary auction license, per event . . . 200.00
- (12) Nonresident special agent or solicitor's license, per annum . . . 40.00
- (13) Bottling house or wine storage license, per annum . . . 1,000.00
- (14) Souvenir retail liquor license, per annum . . . 1,000.00

Sec. 2.1.2 **MALT BEVERAGE LICENSE FEES** The following kinds of malt beverage licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241-244, the fees for which shall be:

- (1) Brewer's license, per annum . . . \$500.00
- (2) Microbrewery license, per annum . . . 500.00
- (3) Distributor's license, per annum . . . 400.00
- (4) Retailer's license, per annum . . . 200.00
- (5) Special temporary license, per event . . . 25.00
- (6) Special Sunday malt beverage retailer's license, per annum . . . N/A
- (7) Brew-on-premises license, per annum . . . 100.00

Sec. 2.1.3 **OTHER LICENSE FEES** The following kinds of other licenses may be issued by the City ABC Administrator, upon receipt of notice from the State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 241-244, the fees for which shall be:

- (1) Convention center license, per annum . . . \$2,000.00
- (2) Extended hours supplemental license, per annum . . . 2,000.00
- (3) Horse race track license, per annum . . . 2,000.00
- (4) Caterer's license, per annum . . . 800.00
- (5) Riverboat license, per annum . . . 1,200.00
- (6) Automobile race track license, per annum . . . 2,000.00
- (7) Limited restaurant license or limited golf course license, per annum (includes distilled spirits, wine, and malt beverages) new applicants . . . 800.00
- (8) Special private club license, per annum. . . 300.00

Sec. 2.1.4 **CERTAIN SPECIAL LICENSES DEFINED**

(1) **TEMPORARY LICENSES:** A special temporary distilled spirits and wine license or a special temporary wine license may be issued only as set out in KRS. 243.260. This license shall authorize the licensee to exercise the privileges of the license for a specified and limited time, not to exceed thirty (30) days. In the case of a nonprofit organization holding a retail malt beverage license, such organization may be issued a distilled spirits and wine special temporary license or a special temporary wine license to sell distilled spirits and wine by the drink on the licensed premises, in conjunction with any public or private event, for a specified and limited time, not to exceed ten (10) days. A malt beverage temporary license maybe issued only as set out in KRS 243.290 and is subject to all conditions and regulations provided at the issuance of the license.

(2) **PRIVATE CLUB LICENSE** A special private club license may be issued only as authorized in KRS 243.270 to a nonprofit social, fraternal, military, or political organization or club, which for more than one (1) year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded. The privileges of the license shall be exercised only on premises where the general public is excluded.

*at home
TD's
Only TB-T or*

(3) **SPECIAL LICENSE REQUIRED FOR SUNDAY SALES** No licensee shall offer alcoholic beverages for sale at any time between 12:00 midnight on Sunday and 6:00 a.m. on Monday unless the licensee shall have obtained a special license for Sunday sales.

(4) All restrictions and prohibitions applying to regular retail drink distilled spirits and wine licenses and retail malt beverage licenses shall apply to the special licenses, unless otherwise provided by law.

Sec. 2.2 **EXPIRATION OF LICENSE; PRORATION OF FEES** All city licenses, except temporary licenses, shall begin on June 1 of any year and shall expire on May 31 of the following year. 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 one-half (1/2) the amount of the full fee for an annual license of that type.

Sec. 2.3 **PAYMENT OF LICENSE FEES; DELINQUENCY** No licensee shall enter into or begin operating any business for which a license is required by this ordinance until the license fee has been paid in full. The fee for renewal of any license shall be paid with the renewal application. Failure to pay any license fee within ten (10) days after it becomes due shall result in a penalty equal to ten percent (10%) of the license fee. Any licensee failing to pay the fees, including penalties, within ten (10) days after such fees are due may be subject to revocation of the license and to other penalties as provided in Article XI of this ordinance.

Sec. 2.4 **REFUND OF FEES**

Sec. 2.4.1 Should any licensee under this ordinance be prohibited from conducting the licensed business for the full period covered by the license because of any changes that may hereafter be made in the laws of the commonwealth with reference to alcoholic beverages or other cause outside licensee's control, then the city shall refund to licensee the proportionate part of the license fee for the period during which licensee is prevented from carrying on said business if the licensee provides sufficient proof to the City ABC Administrator that such period of inactivity was not the fault of the licensee or the result of a revocation, suspension or other wrongdoing by licensee, or an agent or employee of the licensee.

Sec. 2.4.2 In the event a violation of this ordinance occurs that results in the suspension or revocation of the license, the City shall not be required to refund any portion of the license fee.

Sec. 2.5 **REGULATORY LICENSE FEE** Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee on the gross receipts of sale of alcoholic beverages of each license issued by the City ABC Administrator. As of the time of adoption of this ordinance, the regulatory license fee for limited restaurant shall be six percent (6%) of gross sales of all foods and alcoholic beverages sold by the drink

10/11

in restaurants issued a limited restaurant license (70%) of sales derived from sale of food). In the case of retail sales of package distilled spirits and wine, the regulatory license fee shall be four percent (4%) of gross sales. The regulatory license fee shall be three percent (3%) on gross retail sales of package malt beverages. Thereafter, the City Council shall adopt at the budget adoption for each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the City. Should the City fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed until such time as the City Council shall adjust the fee.

Consumption of Drink on Premises. License Fee Required

A. The City Council of the City of Whitesburg, pursuant to KRS 242.185, has determined that economic hardship exists within the City, as is evidenced by its high rate of unemployment, slow rate of growth, job losses in the oil and gas industry, a wide reaching shut down in the coal mining industry and a significant number of vacancies in existing commercial buildings in the City. The City Council has further determined that the licensing authorization contained in subsections "B" and "C" of this Section could aid economic growth. Further, the City Council adopts this Ordinance, i.e. the "Alcoholic Beverage Ordinance of the City of Whitesburg" as a comprehensive, regulatory ordinance covering, inter alla, the licensing and operation of hotels, motels, inns, and restaurants for the sale of alcoholic beverages by the drink for consumption on the premises.

B. The City shall have the power and authority to issue licenses authorizing hotels, motels, inns or restaurants to sell alcoholic beverages, i.e. (1) distilled spirits and wine by the drink or for consumption on the premises; and (2) malt beverages if a malt beverage license is obtained. The licenses shall only be issued to hotels, motels or inns containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons at tables or bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons. The term "bona fide restaurants" as used in this section shall mean, in addition to having the minimum seating requirements set forth above, restaurants which derive at least fifty percent (50 %) of their gross revenue from the sale of food; this requirement is and shall be in accord with KRS 242.1295. The regulatory fee for such a license shall be six percent (6%) of gross sales of all foods and alcoholic beverages sold by the drink for establishments holding a Restaurant Drink License.

C. In accordance with KRS 242.185(4), the City of Whitesburg ABC Administrator is authorized to issue any license permitted by KRS 242.070, and the activity thereby licensed is permitted in accordance with State law and City law.

D. Unless a different license fee is provided for in this Ordinance, the City of Whitesburg license fee for any license authorized by KRS 243.070 shall be the maximum license fee allowed to the City by KRS 243.070, as it may be amended from time to time.

E. All regulations which may be issued to administrator KRS 242.185, this section of this ordinance, and any other provision of this ordinance or State law, shall conform to the requirements of KRS 241.190

Sec. 2.5.1 Payment of such regulatory fee shall be remitted to the City ABC Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the City for the estimated cost of any additional policing, regulatory or administrative expense related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, except that a credit against a regulatory license fee in the City shall be allowed in an amount equal to any license fee imposed by the City pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the tax return approved for such use by the City Council. The return and payment are due no later than by the 10th day of the month immediately following each calendar month.

Sec. 2.5.2 Failure to pay such monthly remittance within ten (10) days of the due date constitutes a violation and subjects licensee to suspension or revocation

Se. 2.5.3 Penalty for failure to file a return and pay monthly remittance by the due date is five percent (5%) of the tax for each thirty (30) days or fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than ten dollars (\$10.00)

Sec. 2.5.4 Interest at the rate of eight percent (8%) per annum will apply to any late payments.

Se. 2.6 **DISPOSITION OF FEES** The City ABC Administrator shall transmit fees upon collection to the City Finance Department to be deposited into the appropriate designated account.

ARTICLE III. OFFICE OF THE CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

Sec. 3.1 Pursuant to KRS 241.160, there is hereby created the office of City Alcoholic Beverage Control Administrator (hereinafter referred to as the City ABC Administrator).

Sec. 3.1.1 The Mayor, subject to City Council approval, shall appoint someone else to fill the position pursuant to KRS 241.170.

Sec. 3.1.2 The City ABC Administrator may from time to time, request of the Mayor, subject to City Council approval, appoint such additional personnel as is necessary to assist him or her in the administration of this ordinance.

Sec. 3.1.3 The salary for the office of City ABC Administrator, if any, together with the salaries of any other personnel assisting the City ABC Administrator, shall be fixed from time to time by the City Council.

Sec. 3.1.4 The functions of the City ABC Administrator shall be the same with respect to the City licenses and regulations as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky (hereinafter referred to as ABC Board) with respect to state licenses and regulations, except that no amendment to these regulations proposed by the City ABC Administrator may be less stringent than the statutes relating to Alcoholic Beverage Control, or than regulations of the ABC Board. No regulation of the City ABC Administrator shall become effective until the City Council has first appropriately approved it.

Sec. 3.1.5 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.

Sec. 3.1.6 The City ABC Administrator shall have all authority as authorized under Ordinances 241 through 244 of the Kentucky Revised Statutes. The City ABC Administrator, and the ABC Administrator's investigators, may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant.

Sec. 3.1.7 Should the City ABC Administrator at any time have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any stockholder, agent or employee of a licensed corporation, LLC or other business organization, has a criminal record, he shall have the authority to require such person to appear in person at the Whitesburg Police Department for the purpose of having his or her fingerprints taken.

Sec. 3.1.8 The City ABC Administrator before entering upon his or her duties as

such, shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00). The ABC Administrator may require any employee under the ABC Administrator's supervision to execute a similar bond in such penal sum as the Administrator deems necessary.

Sec. 3.2 Appeals from the orders of the City ABC Administrator may be taken to the state ABC Board by filing with the Board within thirty (30) days a certified copy of the orders of the City ABC Administrator. The Board shall hear matters at issue as upon an original proceeding. Appeals from orders of the City ABC Administrator shall be governed by KRS Chapter 13B.

Sec. 3.3 When any decision of the City ABC Administrator shall have been appealed, or when a protest has been lodged against an application for any license within the City, and the ABC Board shall have made a decision regarding such appeal or protested application, the City ABC Administrator, upon receipt of notice of finality of the decision, shall enter such orders and take such action as required by the final order of the ABC Board. As provided by law, and as used herein, no order of the ABC Board is final until all appeals or appeal times shall have been exhausted. A "final order" of the ABC Board is the order entered by said Board, unless an appeal is taken from the Board's order, in which case the "final order" is the order entered by the Board upon direction from the reviewing court of last resort in the final order of said reviewing court.

ARTICLE IV. APPLICATION FOR LICENSE; MAINTENANCE OF LICENSE

Sec. 4.1 **ADVERTISEMENT.** Before an application for a license shall be considered, the applicant must publish a notice of its intent to apply for an alcoholic beverage license in a newspaper meeting the requirements of KRS Chapter 424.

Sec. 4.1.1 The advertisement shall state the name and address of the applicant. It shall state the members of the partnership if the applicant is a partnership, and membership of the LLC if the applicant is an LLC, as well as the name of the business and its address. If the applicant is a corporation, the advertisement shall state the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself. All advertisements shall state the location of the premises for which the license is sought, and the type of license for which application is made.

Sec. 4.1.2 The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170.

Sec. 4.2 **APPLICATION FEE** A nonrefundable application fee of \$50.00 shall be paid with the filing of the application for a city license. If the license is granted,

the application fee shall be credited against the initial license fee.

Sec. 4.3 **FORM OF APPLICATION** 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 Whitesburg, as amended and supplemented from time to time.

Sec. 4.3.1 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 Whitesburg, 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 Whitesburg resident indicate when residence was established;
- (6) Whether or not he or she has any interest in any other license or LLC, corporation, partnership or other business organization holding a license under this ordinance, or any license issued pursuant to KRS Chapters 241-244;
- (7) Extent of stock or company ownership;
- (8) Whether or not he or she has any interest in any license or LLC, corporation, partnership or other business organization holding a license in any other state or province.

Sec. 4.3.2 Each application shall be accompanied by a certified check, cash or a postal or express money order for the amount of the license fee, less the \$50.00 application fee.

Sec. 4.3.3 In addition to the above specified information, the applicant shall file with the application responses to any additional questions as may be posed or prescribed by the City ABC Administrator. The City Council has adopted a statement of guidelines and priorities for the issuance of licenses and, in order to determine the extent to which applications may further or impede the objectives of those guidelines, the Council may, by municipal order, adopt a questionnaire to be submitted to applicants for licenses. Upon adoption of the questionnaire, it shall become a part of the application process. The initial questionnaire adopted by the City Council is a part of this ordinance and incorporated herein as Exhibit 4.3.3 A. The questionnaire may be altered, expanded, supplemented or replaced by municipal order of the Council hereafter. In addition to the information contained in the application and any City ordered questionnaire, the City ABC Administrator may require such other information as the Administrator may in his/her discretion deem desirable, reasonable or appropriate to the consideration of the application.

Sec. 4.4 **OTHER CONDITIONS** In addition to any other inquiries, conditions or considerations required or permitted by law,

- (1) the City ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until the 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;
- (2) All applicants shall voluntarily submit to a criminal background check and shall sign a waiver allowing the release of this information to the City ABC Administrator; and
- (3) 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 issuing the license, nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are 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.
- (4) No person, whether an applicant for license, or a licensee, shall in any manner attempt to bribe, threaten, unduly influence or intimidate the City ABC Administrator, or any member of his or her staff, or any state ABC administrator or staff, in any matter in which an application or proposed application for license, or procedure for revocation or suspension is pending before such officer. This paragraph is not intended to stifle expressions of opinion; however, it is intended to make clear that the ABC Administrators are public officials charged with the administration and enforcement of the law, both local and state. Any person applying for a license, or contesting the revocation or suspension of a license, who engages in attempted bribes, threats, attempted undue influence or intimidation of a City or state ABC Administrator or staff shall be disqualified from receiving or retaining a license, in addition to other penalties as provided by law. The procedures for appeals shall apply to disqualifications, revocations or suspensions under this section. This section shall not be interpreted to prohibit monetary settlements in lieu of revocation or suspension of license after a final order or revocation or suspension, where the ordinance and applicable statutes allow for such payments in settlement.

Sec. 4.5 **FORM OF LICENSE** All City licenses shall be in such form as may be prescribed by the 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.

Sec. 4.6 **CHANGE OF INFORMATION**

Sec. 4.6.1 If after a license to individuals or to a sole proprietor has been issued, there is a change in any fact required to be set forth in the application, a verified amendment in writing giving notice of the change shall be filed with the City ABC Administrator within ten (10) days of the change.

Sec. 4.6.2 Since a number of licenses issued by the City are in the name of corporations or other business organizations, it is necessary that ownership changes in such organizations be reported to the City ABC Administrator. The City ABC Administrator can, therefore, investigate the person to whom the ownership or management is transferred in order to ascertain whether that person is precluded by statute from holding an interest in an alcoholic beverage license.

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

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

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

(3) This information shall be filed with the City ABC Administrator as a verified amendment of the application pursuant to which the license was granted. Filing

shall be made within ten (10) days of any change of required information.

Sec. 4.7 **RENEWAL OF LICENSE**

Sec. 4.7.1 Every year, except in the case of temporary licenses, each licensee shall renew its license. All renewal licenses must be on file with the City ABC Administrator no less than thirty (30) days prior to the expiration of the license for the preceding license period or the same shall be canceled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license period as a result of construction, act of God, casualty, death, the acquisition or threatened acquisition of the premises by any federal, state, city or other governmental agency or private organization possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; provided that said licensee shall file a written verified statement no less than twenty (20) days from the expiration date of the license, setting forth these facts, and the 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.

Sec. 4.7.2 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.

Sec. 4.8 **LOST OR DESTROYED LICENSE** When a license shall be lost or destroyed without fault on the part of the licensee or his agent or employee, a duplicate in lieu of the original license shall be issued by the City ABC Administrator after the Administrator shall have been satisfied as to the facts; provided, however, that the applicant for said duplicate license shall pay a fee of ten dollars (\$10.00) for the duplicate license.

Sec. 4.9 **REVOCATION OR SUSPENSION** 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, 242, 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, 242, 243 and 244 to be created, 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.

Sec. 4.9.1 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.

Sec. 4.9.2 In addition to the foregoing stated causes, 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 clerk, servant, agent or employee of the licensee shall have been convicted of two (2) violations of the terms and provisions of KRS Chapters 241, 242, 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 clerk, servant, agent or employee of the license shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one (1) such felony and one (1) such misdemeanor.

(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 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.

Sec. 4.10 *PROCEEDINGS FOR REVOCATION OR SUSPENSION OF LICENSE; NOTICE AND OPPORTUNITY TO CONTEST; APPEAL; EFFECT OF REVOCATION OR SUSPENSION*

Sec. 4.10.1 Upon the verified complaint of any person, or on the initiative of any law enforcement officer or of the City ABC Administrator, the City ABC Administrator may institute proceedings to revoke or suspend any license granted under this

ordinance. A license may be revoked or suspended only after the licensee shall have been given written notice, by certified or registered mail, of the proposed revocation, including notice of the reasons for such proposed action. The licensee shall be given opportunity to be heard in opposition to the proposed revocation or suspension. The notice of proposed action shall advise the licensee of the date, time and place of the hearing. Notice shall be sufficient if mailed to the licensee at the address shown in the last application for a license or in the last statement supplemental to or in amendment of the application, whether or not the mailing is received for or claimed.

Sec. 4.10.2 The specific procedures to be followed in hearings on actions for revocation or suspension shall be prescribed by the City Council of the City of Whitesburg by municipal order. Such order shall be maintained on file in the office of the City ABC Administrator and a copy furnished with any notice of proposed revocation or suspension sent to a licensee. If the Council shall fail to adopt such municipal order, the procedures shall be those set out in the Kentucky Administrative Procedure Act (KRS Chapter 13B).

Sec. 4.10.3 A decision of the City ABC Administrator revoking or suspending a license may be appealed as provided in KRS 243.550.

Sec. 4.10.4 Within three (3) days after any order of revocation or suspension of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section. The licensee shall at once surrender his license to the City ABC Administrator. If the revoked or suspended 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 officers to take physical possession of the license and return it to the City ABC Administrator.

Sec. 4.10.5 When a license has been revoked or suspended, 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.

Sec. 4.10.6 Appeal from the decision of the City ABC Administrator revoking or suspending a license shall be to the ABC Board. The timely filing of an appeal shall stay further proceedings for revocation.

Sec. 4.10.7 If a license is revoked or suspended by an order of the City ABC Administrator, and the decision is not appealed, the licensee shall at once suspend all operations authorized under his license. Upon the entry of a final order of the ABC Board sustaining or ordering revocation or suspension on appeal, the licensee shall at once suspend all operations authorized under this license.

Sec. 4.11 **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.

Sec. 4.12 **REFUSAL OF LICENSE; GUIDELINES FOR APPROVAL OF QUOTA LICENSES**

Sec. 4.12.1 The City ABC Administrator may refuse to issue or renew a license for any of the following reasons:

- (1) Causes for refusal to issue or renew a license and for suspension or revocation of a city license shall be the same as provided for state licenses according to KRS 243.450, 243.490 and 243.500, as well as violation of any city ordinance regarding alcohol beverage licensing, sales or the administration thereof.
- (2) If the applicant has done any act for which a revocation of license would be authorized; or
- (3) If the applicant has made any false material statement in his application.

Sec. 4.12.2 In the case of quota licenses, before approving an application, the City ABC Administrator is hereby directed to consider, in addition to the factors set out in KRS 243.450, 243.490 and 243.500, and any other factors the Administrator determines in his or her discretion to be reasonable and pertinent to the license application, the following criteria:

- (1) **Ownership:** The City of Whitesburg places great value on business owners who are invested in the Whitesburg community.
- (2) **Economic Impact:** The City of Whitesburg desires businesses which make the most positive impact on the community, in number of jobs, payroll, property investment and revenues to the city.
- (3) **Site of Business:** The City of Whitesburg is interested in serving all geographic areas of the City. Therefore, the City does not wish to cluster all licensed ABC outlets in one area.
- (4) **Aesthetics:** The City of Whitesburg is committed to protecting the character and beauty of our community.
- (5) **Revitalization of Downtown:** The City of Whitesburg wholeheartedly supports the revitalization of downtown and the revitalization and reuse of existing buildings.

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

(7) Public Support of Licensed Business in the Area: The City of Whitesburg intends that public sentiment and safety be considered in deciding upon the approval of retail liquor sales licenses in any area of the City.

Sec. 4.12.3 An applicant who has been refused a license by the City ABC Administrator may appeal the refusal to the ABC Board pursuant to KRS 241.200.

Sec. 4.13 **REVIEW OF LICENSE; BOOKS, RECORDS AND REPORTS**

Sec. 4.13.1 Applicants to whom a license is issued pursuant to this Ordinance shall provide periodic information demonstrating compliance with the conditions of any license, such as, but not limited to, the continuing requirement that a minimum percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's monthly regulatory fee filings. The City shall provide the form schedule to the licensee. The licensee's acceptance of a license to manufacture or traffic in alcoholic beverages shall constitute consent to the filing of the monthly report. In the case of caterer filing, the monthly report shall identify each catered event by type of event, date and address of the event, and shall provide a per event breakdown of sales and the ratio of food sales to alcohol sales during the reporting period. This requirement for filing of reports notwithstanding, the City may at any time come upon the premises of any licensee and examine the books and records to determine whether the licensee is in compliance with all parts of this ordinance. In the event the conditions of any license requirement are not met during any particular month, the City ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the City ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the food sale percentage requirement has been met.

Sec. 4.13.2

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

(2) 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.

Sec. 4.14 DORMANCY

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

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

(3) The provisions of paragraph (2) hereof shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain, whether acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. Prior to the expiration of ninety (90) days of inactivity, such licensee shall furnish to the City ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business, for any of the specific reasons set forth herein, and the City ABC Administrator may grant an extension of the dormancy with the license continuing to remain in effect during the license period or until same is transferred to another premises, notwithstanding the fact that no business is transacted during said period; provided, however, no such license shall be considered valid unless business is conducted thereunder 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.

ARTICLE V. HOURS FOR SALE AND DELIVERY

Sec. 5.1 A licensee for distilled spirits, wine or malt beverages by the drink shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 6:00 a.m. on each day of the week and until 1:00 a.m. of the following day.

Sec. 5.2 A licensee licensed to sell distilled spirits, wine or malt beverages by the drink may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m.

on January 1, provided that the appropriate licenses have been obtained from both the city and the state ABC Board.

Sec. 5.3 Retail package distilled spirits and wine sales and package malt beverage sales shall be permitted from 6:00 a.m. until midnight each day of the week, except that such package sales shall not be permitted during the hours of 12:00 midnight and 1:00 p.m. on Sunday, or between the hours of 9:00 p.m. on Sunday and 6:00 a.m. on Monday.

SEC. 5.4 The licensee shall not sell or dispense any distilled spirits, wine or malt beverages during the hours that the polls are open on any election day.

ARTICLE VI. CONDITIONS, PROHIBITIONS AND RESTRICTIONS

Sec. 6.1 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.

Sec. 6.2 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 Letcher County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or the City ABC Administrator, or his designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

Sec. 6.3 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 premises. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

Sec. 6.4 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 nor shall any licensee give away any alcoholic beverage in any quantity for less than a full monetary consideration.

Sec. 6.5 No licensee or agent or employee of the licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee sell alcoholic beverages to any person who is actually or apparently under the influence of alcoholic beverages, or known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as

many as three (3) times within the most recent twelve (12) month period. No licensee shall permit any person who is actually or apparently under the influence of alcoholic beverages to remain on the licensed premises. As used herein, whether a person is actually or apparently under the influence of alcoholic beverages shall be determined by the licensee or server with specific reference to the principles and guidelines established in mandatory alcohol server training as to the signs of alcohol intoxication.

Sec. 6.6 The licensee shall not sell or dispense alcoholic beverages to any person who is under 21 years of age. The licensee shall check all id's to ascertain that every person attempting to purchase or consume alcoholic beverages is at least 21 years of age.

Sec. 6.7 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.*

Sec. 6.8 The licensee, before commencing any business for which a license has been issued, shall post and display at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

Sec. 6.9 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) nor more than fifty dollars (\$50.00). KRS 243.895.

Sec. 6.10 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.

Sec. 6.11 No licensee shall knowingly employ in connection with his or her business any person who:

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

Sec. 6.12 Licensees shall not offer reduced drink specials (e.g. two-for-one, happy hours) after the hour of 11:00 p.m. until closing.

Sec. 6.13 All retail beer and retail drink licenses shall be required to provide indoor or outdoor lavatory facilities for their customers where such beverages are consumed on the premises.

Sec. 6.14 No licensee shall offer or permit nudity, adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premise. No licensee shall permit explicit sexual activity, whether actual or simulated, upon any licensed premises. No licensee shall sponsor or permit wet t-shirt or wet clothing contests, lingerie fashion shows, mud wrestling, jello wrestling or similar activities, nor shall a licensee allow dancing with touching for compensation (including but not limited to wages, tips or gratuities), or any other service, display or contest requiring physical contact between patrons and/or patrons and employees on any licensed premises. No licensee shall sponsor, offer or permit drinking contests, all-you-can-drink specials or free drinks on any licensed premise in the City.

Sec. 6.15 No license shall be issued for any premises to operate a vehicle "drive-through" outlet for the sale of alcoholic beverages, nor shall any person or licensee operate or permit such a vehicle drive-through outlet. This prohibition shall not apply to a drive-up window at any premises licensed for retail package liquor, wine or malt beverage, including retail beer, where the primary sales area is arranged for and utilized by persons entering the premises on foot and manually carrying out the products purchased therein.

Violation of this Article shall subject the licensee to penalties provided in this ordinance and shall be cause for revocation of license.

ARTICLE VII. POSSESSION BY MINORS PROHIBITED; NO PERSON SHALL AID POSSESSION BY MINORS

(1) Except as specifically authorized under KRS 241 through 244, no person under the age of 21 may possess alcoholic beverages or enter onto any licensed premises for the purpose of acquiring alcoholic beverages.

(2) As provided in KRS 244.085, no person under the age of 21, except in the company of a parent or guardian, may enter any premises licensed for the package sale of alcoholic beverages. For purposes of this prohibition, "premises" specifically encompasses the entire lot upon which a licensed establishment is situated, including any drive-up window. The prohibition contained in this paragraph (2) shall not apply to premises where the usual and customary business of the establishment is a gas station, convenience store, grocery store, drugstore, or similar establishment.

(3) No person shall knowingly allow, aid, assist, induce, cause or otherwise encourage any minor to be in possession of, use or consume alcoholic beverages. All licensees, as set out in Section 6.6, shall require proof of age of all persons attempting to purchase or consume alcoholic beverages on the licensee's premises.

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

(5) It shall be a defense to any prosecution under this section if the person charged, upon discovery of said minor individuals, manifests a proper effort to enlist the aid of and cooperate with law enforcement personnel in stopping the minor individuals' possession, consumption or use of alcoholic beverages, or that the minor individuals' possession of alcoholic beverages was exempted by KRS 244.087.

ARTICLE VIII. CONSUMPTION ON LICENSED PACKAGE PREMISES PROHIBITED; EXCEPTIONS; CONGREGATING ON CERTAIN ABC LICENSED PREMISES AND VACANT PREMISES PROHIBITED

Sec. 8.1 No licensee of a package store, whether trafficking in distilled spirits, wine or malt beverages, shall permit consumption of alcoholic beverages on the premises unless said person or entity shall also have a drink license conferring the privilege of consumption on the premises or shall have a retail malt beverage license, which permits on premises consumption. Any licensee who intends to permit on premises consumption shall, prior to permitting on premises consumption, notify the City ABC Administrator in writing of this decision. A licensee who does not permit on premises consumption shall post a prominent notice on the premises stating that consumption of alcoholic beverages on premises is prohibited.

Sec. 8.1.1 This restriction regarding on premises consumption shall not prohibit sampling as allowed for microbreweries and wineries under the provisions of KRS Chapter 243, or where sampling is permitted for a retail distilled spirits and wine licensee under the provisions of KRS 244.050, or beer tastings as permitted in 804 KAR 11:030.

Sec. 8.2 No person or entity operating a package liquor store, whether trafficking in distilled spirits, wine or malt beverages, including retail package beer licensees, shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of the licensed premises so as to constitute a public nuisance.

Sec. 8.3 No person or entity being the owner or otherwise in possession or control of any vacant property shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of such property so as to constitute a public nuisance.

Sec. 8.3.1 No persons shall congregate for the purposes, under the circumstances, or in the places proscribed in subsections (1) and (2) of this section.

Sec. 8.3.2 It shall be a defense to any prosecution under subsection (1) or (2) if such licensed vendor or property owner shall permit the division of police to post and maintain a legible, painted or printed sign in at least two (2) separate prominent places in such area, in letters of not less than three (3) inches in height, stating that congregating of persons is prohibited and that violators shall be prosecuted for trespass pursuant to KRS 511.080.

Sec. 8.3.3

As used in this section, the term:

- (a) *Habitual* shall mean consistent, that is, by frequent practice or use, but not necessarily constant or exclusive;
- (b) *Package liquor store* shall mean a retail establishment selling distilled spirits, wine and malt beverages in package containers pursuant to licenses issued for those purposes;
- (c) *Public nuisance* shall mean any activity that endangers or interferes with the general use and enjoyment of neighboring property, passers-by or the health, safety and welfare of the public; and
- (d) *Vacant property* shall mean a vacant lot on which no building or other structure exists or property on which any structure is unoccupied or unused, or which otherwise reflects abandonment by the owner or person with the right of occupancy.

ARTICLE IX. MALT BEVERAGE KEG REGISTRATION

Sec. 9.1 As used in this section, "keg" is defined as a container designed and capable of holding six (6) or more gallons of malt beverage.

Sec. 9.2 All retail licensees (herein after referred to as "licensee") operating within the City of Whitesburg who sell malt beverages in kegs for consumption off the premises of the licensee shall attach a numbered identification tag or other device as provided by the City to each keg at the time of sale and shall require the purchaser to complete and sign a keg registration form for the keg stating the following:

- (1) The purchaser is of legal age to purchase, possess and use the malt beverage,
- (2) The purchaser is not purchasing the keg for resale and will not allow any person under the age of twenty-one (21) to consume the malt beverage,
- (3) The purchaser will not remove, obliterate or allow to be removed or obliterated the identification tag,
- (4) The purchaser will state the property address where the keg will be consumed and physically located; and,
- (5) The purchaser is aware of his/her duty to maintain a copy of the keg registration form visible and readily accessible from the location of the keg.

Sec. 9.3 The licensee shall obtain the name, address and telephone number of the purchaser and shall require the purchaser to produce a valid driver's license number and, if that is not available, to produce at least one other valid form of identification.

Sec. 9.4 The licensee shall retain copies of the keg registration forms for a period of one year and shall make the keg registration form available for inspection by state and local alcoholic beverage control officers and other enforcement officers.

Sec. 9.5 The keg registration form shall be forwarded to the city administrator within five (5) working days in all situations when the keg is not returned or is returned with the identification tag removed or obliterated.

Sec. 9.6 The city administrator is authorized to develop appropriate rules and regulations and to develop and make available forms for the identification tags and keg registration forms.

Sec. 9.7 All licensees that sell or offer for sale kegs shall post on the licensed premises a notice provided by the City concerning the provisions of this Section.

Sec. 9.8 It shall be unlawful for any licensee to sell or offer for sale kegs without the identification tags attached and the keg registration form completed. It shall also be unlawful for any person to remove or to obliterate the identification tag or to fail to have the declaration form visible and readily accessible from the location of the keg. The penalties for violation of this section shall be the penalties as set out in Article XI, Section 11.2 of this Ordinance. In addition, licensees violating this section shall be subject to appropriate alcoholic beverage control administrative remedies.

ARTICLE X. ENFORCEMENT

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

ARTICLE XI. PENALTIES

Sec. 11.1 In addition to any criminal prosecution instituted in Letcher District Court against an alleged violator, the City ABC Administrator may assess the fines and penalties authorized in KRS 243.480, including the per diem assessments for ongoing violations. Should the fines or penalties assessed by the state change under KRS 243.480, then the fines or penalties under this Article shall be adjusted accordingly to mirror the fines or penalties imposed by state law. Payment of all fines shall be made to the City ABC Administrator who shall transmit said payments to the City Finance Department to be deposited in the appropriate designated account.

Sec. 11.2 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 county jail 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 county jail for not more than six months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, LLC, joint stock company, association or other business organization, or a fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

ARTICLE XII. MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

Sec. 12.1 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 ordinance.

Sec. 12.2 All persons required to complete training under paragraph (1) above shall complete that training within thirty (30) days of the date on which the person first becomes subject to the training requirement. When a new business is licensed to serve alcoholic beverages all employees must be trained prior to the opening of the business.

Sec. 12.3 Each licensee shall be responsible for compliance with the training requirements and shall maintain for inspection by the City ABC Administrator a record or file on each employee that shall contain the pertinent training information. Each premise licensed hereunder must at all times when alcoholic beverages are being served have at least one person currently certified in responsible beverage service training on duty.

Sec. 12.4 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

ARTICLE XIII. SIGNS AND ADVERTISING: ADVERTISING ON MUNICIPALLY OWNED PROPERTY OR AT MUNICIPALLY SPONSORED EVENTS PROHIBITED; CERTAIN OTHER ADVERTISING PROHIBITED

Sec. 13.1 All signage shall be in compliance with any and all other existing rules and regulations of the City of Whitesburg and the City Planning & Zoning Commission.

Sec. 13.2 No flashing lights shall be used to illuminate the exterior of any premises licensed under this ordinance.

Sec. 13.3 Any advertising by any licensee under this ordinance shall be in compliance with KRS 244.130 and any regulations promulgated thereunder.

Sec. 13.4 No licensee shall publish or display advertising that is false or misleading, nor shall any licensee publish or display advertising that implies that consumption of alcoholic beverages is fashionable or the accepted course of behavior, or advertising that contains any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, whether or not any known athlete is depicted or referred to, nor shall any licensee publish or display advertising that encourages intoxication by referring to the intoxicating effects of alcohol (or the use of terms such as "high test", "high proof" or "extra strong") or depicting activities that tend to encourage excessive consumption.

ARTICLE XIV. PATIO AND OUTDOOR SALES; WHERE PERMITTED; APPROVAL REQUIRED; SCREENING REQUIREMENTS; EXCEPTIONS

Sec. 14.1 Patio and outdoor sales of alcoholic beverages shall be permitted only on premises licensed for sales of alcoholic beverages by the drink.

Sec. 14.2 No licensee shall offer alcoholic beverages for sale in a patio or outdoor area of the licensee's premises except in a clearly defined patio or outdoor area that is enclosed by a fence or other screening, not less than four (4) feet in height. All outdoor areas and screening shall be subject to the approval of the City ABC Administrator. An exception to this restriction may be granted for seasonal sidewalk cafes, upon application to and authorization from the ABC City Administrator. The permission to operate a sidewalk café shall be governed by the provisions of this Article and shall be subject to the regulation of local zoning authorities as well as codes enforcement and public safety officers.

Sec. 14.3 No licensee shall offer patio or outdoor sales of alcoholic beverages unless the patio or outdoor area and fencing or screening area shall have been approved in advance by the ABC Administrator.

Sec. 14.4 Unless exempted by the following provisions of this ordinance and by permission of the City ABC Administrator, patio areas must comply with the screening requirements of this ordinance. Sidewalk café seating areas must comply with this ordinance and with local zoning ordinance and other public safety requirements noted in this ordinance or in other provisions of local ordinance, statute or regulation.

SEC 14.4.1 EXCEPTION TO SCREENING REQUIREMENT FOR OUTDOOR SALES AND SERVICE OF ALCOHOLIC BEVERAGES IN THE CASE OF PERMITTED SIDEWALK CAFES IN THE DOWNTOWN BUSINESS DISTRICT

Licenses in the Downtown Business District may request an exception from this [outdoor screening of patio] provision to permit seasonal sidewalk cafes that serve food and alcoholic beverages as an adjunct to the primary and adjacent licensed premises. In the case of permitted sidewalk cafes, they shall be deemed part of the licensed premises.

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

The ABC Administrator may issue the permit if he/she finds that (a) the Applicant is licensed under this ordinance and the ABC Code for the Commonwealth of Kentucky, (b) the Applicant is in compliance with all conditions and restrictions of said license, (c) the Applicant has all necessary building and use permits, including certification of the Zoning Administrator that the sidewalk café is permitted at the premises location, and (d) also finds that the issuance of the Permit would not result in any significant adverse land use impacts.

Sec. 14.4.2 **CONDITIONS FOR SIDEWALK CAFE PERMIT**

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

- (1) No sidewalk café shall be permitted in any portion of the public sidewalk where normal pedestrian traffic flow is obstructed. A minimum clearance width of thirty-six (36) inches must be maintained on the public sidewalk at all times. The sidewalk café shall not be permitted in any manner to obstruct the entrance/exit to the restaurant.
- (2) No tables, chairs or any other furnishings, except plant tubs, shall be placed in the area used for the sidewalk cafe during any period when the sidewalk café is not open and being operated. They shall be removed at the end of each business day at the hour specified in the Permit. Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved Permit. While such café is in operation, all tables and chairs shall be kept in a clean, sanitary condition.
- (3) The use of a portion of the public sidewalk as a sidewalk café shall not be an exclusive use. All public improvements, including but not limited to, trees, light poles, traffic signals, pull boxes or manholes, or any public-initiated maintenance procedures, shall take precedence over said use of the public sidewalk at all times.
- (4) The licensee shall, in addition to all other requirements of law, take reasonable steps to insure that alcoholic beverages are consumed only by patrons of the establishment who are of age, and not by passersby or persons who are not of age or who are obviously or apparently intoxicated.
- (5) No disposable cups or drinking vessels may be used and the licensee shall not permit any alcoholic beverages to be taken off premises by patrons, customers or guests.

- (6) No amplified sound shall be used within a sidewalk café. At no time shall any music originating from any part of the Premises create a nuisance;
- (7) Dancing shall not be permitted or allowed in the sidewalk café;
- (8) The licensee must at all times comply with all federal, state and local laws regarding the sale, service and consumption of alcohol and the operation of the Premises;
- (9) The permit for sidewalk cafe may not be assigned or transferred.

Sec. 14.4.3. **OTHER REQUIREMENTS APPLICABLE TO SIDEWALK CAFES**

No sidewalk café permit shall be effective unless the licensee has filed with the ABC Administrator evidence of insurance insuring the licensee against liability imposed by law arising out of the ownership, maintenance or operation of such sidewalk café in an amount to be established by the City Manager. The City shall be named an additional insured in the policy, providing such insurance and such policy shall further provide that it may not be canceled except upon ten (10) day's written notice (or more) filed with the ABC Administrator.

ARTICLE XV. IMPLEMENTATION OF ORDINANCE PROVISIONS

From time to time, the Whitesburg 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 ordinance.

ARTICLE XVI. REPEAL OF PRIOR ORDINANCES PERTAINING TO ALCOHOLIC BEVERAGE CONTROL

On the effective date of this ordinance, it shall supersede and supplant prior ordinances pertaining to alcoholic beverage control. Ordinance Number 2007-4 and Ordinance Number 2007-4A are hereby repealed.

ARTICLE XVII. SEVERABILITY If any section, subsection, paragraph, sentence, clause, phrase, or a portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

EFFECTIVE DATE: This Ordinance shall be effective at midnight on August 29, 2012.

GIVEN FIRST READING AND PASSED _____.

GIVEN SECOND READING AND PASSED _____.

PUBLISHED BY THE MOUNTAIN EAGLE _____

APPROVED: _____
JAMES W. CRAFT, MAYOR
CITY OF WHITESBURG

ATTEST:

GARNETT SEXTON, CITY CLERK

eff 8/1/2012

WHITESBURG

Alcohol and
Beverage Control

ORDINANCE NO. 2007-4

CITY OF WHITESBURG ABC ORDINANCE
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NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitesburg, Kentucky, as follows:

SECTION ONE:

ARTICLE I. 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. Said seating must comply with all fire and safety capacity ratings and regulations of the City, County or State.

(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.

(c) 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 apply to the sale of all alcoholic beverages on any premises or establishment within the City of Whitesburg, as authorized pursuant to KRS 242.185(6) ("Limited Restaurant"). The sale of alcoholic beverages on any premises or establishment within the City of Whitesburg pursuant to a license issued by the State Alcoholic Beverage Control Board under a provision other than KRS 242.185(6) shall be governed by the applicable state statutes; however, the provisions of this ordinance shall apply to all persons, licensees, premises and establishments within the City of Whitesburg to the fullest extent such application is delegated to the City, or otherwise

authorized, by the provisions of Chapters 241 through 244 of the Kentucky Revised Statutes. 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 of 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 primary license shall be issued by the City only to the owners and/or operators of those establishments which qualify under KRS 242.185(6). Whenever any person or entity has been licensed by the state Alcoholic Beverages Control Commission to manufacture or traffic in alcoholic beverages within the City of Whitesburg pursuant to some other provision of Chapters 241 through 244 of the Kentucky Revised Statutes, then, pursuant to KRS 242.185(4), upon issuance

of the state license, such state licensee shall apply to the City of Whitesburg for a supplemental city license for the privilege of manufacturing and/or trafficking in alcoholic beverages within the City of Whitesburg. City license fees, whether primary or supplemental, shall be assessed in accordance with KRS 243.070 and Article IV of this Ordinance. Regulatory license fees shall be assessed in accordance with KRS 243.075 and Article IV of this Ordinance.

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

(a) The Mayor shall appoint a 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 her/him in the administration of this ordinance.

(c) The salary for the office of City ABC Administrator, together with the salaries of any other personnel assisting the City ABC Administrator, shall be fixed from time to time by the Mayor.

(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 than regulations of the ABC Board. No regulation of the City ABC Administrator shall become effective until it has first been appropriately approved by the 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, she/he shall have the authority to require such person to appear in person at the Whitesburg 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 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) 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 Chapter 424.

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

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

(b) 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 City of Whitesburg, as amended and supplemented from time to time.

(c) 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 and the City of Whitesburg, 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 Whitesburg 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.

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 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 Whitesburg shall begin on June 1 of any year and shall expire on May 31 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 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.

(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) There is hereby imposed upon each holder of a license to manufacture and/or traffic in alcoholic beverages, whether pursuant to KRS 242.185(6) or any other provision of KRS 241 through 244, a license fee for the privilege of manufacturing and/or trafficking in alcoholic beverages within the City of Whitesburg. The annual license fee under KRS 242.185(6) ("Limited Restaurant") shall be \$1,000.00. The annual city license fee for the sale of alcoholic beverages during extended hours shall be \$0.00. The annual city license fee for a Caterer's License shall be \$600.00. Otherwise, the annual license fee for any supplemental city license, as set out in Article II, shall be the maximum amount provided in KRS 243.070 for that particular license. These fees may be amended from time to time if not inconsistent with the applicable state statutes.

(b) The City ABC Administrator shall transmit fees 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 State ABC Board of the finality of appeal or protest permitted upon such license pursuant to the provisions of KRS 243.360, and the fact that the state ABC Board has approved the applicant's

state application.

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 employee, a duplicate in lieu of the original license shall be issued by the City ABC Administrator after she/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 of 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, 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 her/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 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 of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one (1) such felony and one (1) such misdemeanor.

(4) Willful and deliberate failure or 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 Chief of Police 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 ABC 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 Five Hundred Dollars (\$500.00) 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 quarterly regulatory fee filings. In the event the 70% food requirement is not met during any particular quarter, the City ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the City ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the 70% minimum food requirement has been met.

Regulatory License Fee:

(a) 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) and Article II of this Ordinance. The regulatory license fee shall be six (6%) percent of the gross receipts from the sale of food and 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 purpose of fully reimbursing the City

for the estimated costs of any additional 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 licenses permitted by law. 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 (10) days of the due date constitutes a violation and subjects licensee to suspension revocation.

(d) Penalty for failure to file a return and pay quarterly remittance by the due date is five percent (5%) of the tax for each ninety (90) days or fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall the penalty be less than One Hundred Dollars (\$100.00).

(e) Interest at the rate of ten percent (10%) per annum will apply to any late payments.

Change of Information:

(a) Since a number of licenses issued by the City are in the name of corporations, it is necessary that stock ownership

changes in such corporations 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 ten percent (10%) of the outstanding stock. Transfer of more than ten percent (10%) of the total stock shall require a new license.

(c) The following information will be required concerning any new director, officer, or person securing any interest in alcoholic beverage license:

- (1) Name and address;
- (2) Nature of interest;
- (3) Whether or not a citizen of the United States;
- (4) Date of birth;
- (5) Date residence was established in Kentucky, if a resident of Kentucky. If a Whitesburg, 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) It is necessary that a licensee actually conduct the business authorized by such a license or else the license will be declared dormant and become null and void after ninety (90) days. Such is the intent of this section. Realizing that a licensee, like other business, may have his business interrupted by situations not under his control, various exceptions to the dormancy rule have been included in this section.

(b) Any license under which no business is transacted during a period of ninety (90) days shall become null and void. At the expiration of the ninety (90) day period the license shall be surrendered to the City ABC Administrator.

(c) Except that the provisions of subsection (a) hereof shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by 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 ninety (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 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 her/his sound discretion.

(d) All renewal licenses must be on file with the City ABC Administrator within thirty (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 of 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 through failure of landlord to renew existing lease; that said licensee shall file a written verified statement no less

than twenty (20) days from the expiration date of the license, setting forth these facts, and the 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.

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, state building inspector, Division of Plumbing, the State Fire Marshall's Office 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 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 inspection by the City ABC Administrator and such City employees who may assist the City ABC Administrator in her/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 alcoholic beverages by the drink Monday through Saturday between the hours of 6:00 a.m. and midnight.

(b) No alcohol may be sold or dispensed on Sundays, unless pursuant to paragraph (d) below.

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

(d) 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. If New Year's Eve falls on a Sunday, alcoholic beverages may be sold and dispensed commencing at 5:00 p.m.; if New Year's Day falls on a Sunday, then alcoholic beverages may be sold and dispensed until 1:00 a.m. on January 1; provided, however, that in either instance, the appropriate licenses for Sunday sales and for extended sales must be obtained from both the City and the State ABC Board. In either event, there shall be no additional City license fee imposed.

(e) The licensee shall not sell or dispense any alcoholic

beverages during the hours that the polls are open on any special, 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 Letcher County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or the City ABC Administrator, or her/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 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, and with gender-neutral language supplied, by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.

A person who violates this subsection shall be subject to a fine of not less than ten dollars (\$10.00) nor more than fifty 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, check or credit or debit card at time of purchase.

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

1. Has been convicted of any felony within the last two (2) years;

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

3. Is under the age of twenty (20) years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined under state statute;

4. 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 Whitesburg. 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 Letcher District Court 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 county jail 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 county jail 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 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 ordinance.

(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 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, or the principal owner of the license, 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 Whitesburg.

(b) Signage which refers directly or indirectly to alcoholic beverages will be limited to one (1) sign not over two (2) square feet that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of displaying advertising which refers 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. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business cards not larger than two and one-half inches (2-1/2") in size, setting forth the price at which he offers alcoholic beverages for sale.

(c) No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.

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

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

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

ARTICLE X. IMPLEMENTATION OF ORDINANCE PROVISIONS

From time to time, the Whitesburg 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

ordinance.

SECTION 2: 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 3: EFFECTIVE DATE

This Ordinance No. 2007-4, is effective upon final reading and publication.

GIVEN FIRST READING AND PASSED: May 8, 2007

GIVEN SECOND READING AND PASSED: May 11, 2007

PUBLISHED BY THE MOUNTAIN EAGLE: May 16, 2007

APPROVED:

James W. Craft
JAMES W. CRAFT, I, MAYOR

ATTEST:

Garnett B. Sexton
GARNETT SEXTON, CITY CLERK