

# WINCHESTER

## Winchester, Kentucky, Code of Ordinances >> ARTICLE I. GENERAL ALCOHOLIC BEVERAGE REGULATIONS >>

### ARTICLE I. GENERAL ALCOHOLIC BEVERAGE REGULATIONS

Sec. 3-1. Licensed premises hours of operation.

Sec. 3-2. Trafficking prohibited when establishments closed.

Sec. 3-3. Penalties for violation of chapter.

Secs. 3-4—3-15. Reserved.

#### **Sec. 3-1. Licensed premises hours of operation.**

The hours of operation for any premises for which a license has been granted for the sale of distilled spirits, malt beverages or wine by the drink shall be:

- (1) The provision of the State Alcoholic Beverage Control laws contained in KRS Chapters 244.290 and 244.480 are hereby adopted as part of the alcoholic beverage regulations of the city.
- (2) As to a licensee for the sale of distilled spirits or wine, between 8:00 a.m. and 12:00 midnight, Monday through Thursday; and Friday and Saturday, between 8:00 a.m. and 1:00 a.m. of the following day.
- (3) As to a licensee for the sale of malt beverages, between 6:00 a.m. and 12:00 midnight, Monday through Thursday; and Friday and Saturday, between 6:00 a.m. and 1:00 a.m. of the following day.
- (4) Provided, however, that if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stock of distilled spirits, malt beverages and/or wine, and all fixtures and apparatus connected with his business as a licensee, and such separate department is kept locked during the times for which closure is required above, the licensee shall be deemed to have complied with this section. This provision does not apply to retail sale of malt beverages in package form.
- (5) In accordance with KRS 244.290(4), a licensee for the sale of distilled spirits, wine and/or malt beverage by the drink shall be permitted to sell or dispense alcoholic beverages on Sunday between 1:00 p.m. and 10:00 p.m.
- (6) Provided, further, for distilled spirits, wine and/or malt beverage licensee by the drink for consumption on the premises on New Year's Eve until 1:00 a.m. on January 1, regardless of the day of the week January 1 shall fall upon, provided that the appropriate licenses and approvals have been obtained from both the city and the state ABC board.

*(Ord. No. 268, § 1, 8-25-44; Ord. No. 601, § 1, 5-8-57; Ord. No. 606, §§ 1, 2, 10-1-57; Ord. No. 17-82, § 1, 8-3-82; Ord. No. 8-94, § 1, 5-3-94; Ord. No. 10-97, § 1, 3-4-97; Ord. No. 16-2001, § 1, 10-2-01; Ord. No. 13-2013, 9-3-13)*

#### **Sec. 3-2. Trafficking prohibited when establishments closed.**

It shall be unlawful for any licensee to sell, lend, deliver or give away distilled spirits or wine during the hours licensed premises are required to be closed as provided in section 3-1.

*(Ord. No. 606, § 3, 10-1-57)*

### **Sec. 3-3. Penalties for violation of chapter.**

Except as may be otherwise specifically provided in this chapter, any person who shall violate any provision of this chapter shall, upon conviction, be punished by a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or imprisoned for not more than six (6) months, or both, and in addition thereto his license shall be revoked. 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 for not more than six (6) months, or both. If the offender is a corporation, joint stock company, association or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

*(Ord. No. 181, § 11, 4-13-34; Ord. No. 608, § 4, 10-1-57)*

### **Secs. 3-4—3-15. Reserved.**

Winchester, Kentucky, Code of Ordinances >> **ARTICLE II. ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR >>**

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**ARTICLE II. ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR <sup>[2]</sup>**

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Sec. 3-16. Office created.

Sec. 3-17. Functions.

Sec. 3-18. Reserved.

Secs. 3-19—3-29. Reserved.

**Sec. 3-16. Office created.**

There is hereby created the office of city alcoholic beverage control administrator hereinafter "administrator," who shall be the chief of the Winchester Police Department. The administrator may be a member of the city licensing board in the discretion of the appointing authority.

*(Ord. No. 357, §§ I, II, 6-14-48; Ord. No. 476, §§ 1, 2, 5-20-52; Ord. No. 922, § 3, 6-26-73; Ord. No. 20-2002, § I, 9-17-02)*

**Sec. 3-17. Functions.**

The functions of the administrator shall be the same, with respect to city licenses and regulations, as the functions of the state alcoholic beverage control board with respect to state licenses and regulations, except that no regulation adopted by the administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the state alcoholic beverage control board. No regulation of the administrator shall become effective until it has been approved by the state alcoholic beverage control board.

*(Ord. No. 922, § 4, 6-26-73)*

*State law reference— Similar provisions, KRS 241.190.*

**Sec. 3-18. Reserved.**

*Editor's note—*

Ord. No. 20-2002, § I, adopted Sept. 17, 2002, repealed former section 3-18 in its entirety which pertained to the compensation of city alcoholic beverage control administrator and derived from Ord. No. 357, § II, 6-14-48; Ord. No. 476, § 3, 5-20-52; Ord. No. 922, § 2, 6-26-73; Ord. No. 7-80, § 1, 2-12-80.

*Cross reference— Compensation of members of licensing board, § 9-42.*

**Secs. 3-19—3-29. Reserved.**

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**FOOTNOTE(S):**

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*State Law reference— Office of city alcoholic beverage control administrator, KRS § 241.160 et seq. ([Back](#))*





Winchester, Kentucky, Code of Ordinances >> DIVISION 1. GENERALLY >>

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**DIVISION 1. GENERALLY**

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Sec. 3-30. License required.

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Sec. 3-33. Types of beverage licenses.

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Sec. 3-42. Transferability.

Sec. 3-43. Disposition of taxes and forfeited bonds.

Sec. 3-44. Penalties.

Secs. 3-45—3-50. Reserved.

**Sec. 3-30. License required.**

No person shall vend, sell, deal or traffic, or, for the purpose of evading any law or provision of this Code, give away any intoxicating liquor in any quantity whatever, or cause the same to be done, without having procured a license as provided in this article, nor without complying with all provisions of this article, and all statutes, ordinances and regulations applicable thereto.

*(Ord. No. 181, § 2, 4-13-34)*

**Sec. 3-31. State license prerequisite to city license.**

No license provided for in this article shall be granted, issued or sold to any person until such person shall have obtained from the state administrator a license as provided by state law.

*(Ord. No. 181, § 4, 4-13-34)*

**Sec. 3-32. Local approval required before application for state license.**

Any person intending to make application for a license for a premises within the city, or for the transfer of any existing liquor by the drink license, shall first make an application with and obtain the approval of the local licensing board as hereinafter provided before making application with the state alcoholic beverage control board.

*(Ord. No. 864, § 3, 11-17-90)*

*State law reference— Local administrator to approve application first, KRS 243.370.*

**Sec. 3-33. Types of beverage licenses.**

There are hereby created the following types of alcoholic or malt beverage licenses:

*Malt beverage license.* A malt beverage license shall authorize the sale at retail of malt beverages in package form or for consumption on the premises in accordance with the Kentucky Revised Statutes.

*Retail package license.* A distilled spirits and wine retail package license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wine at retail in unbroken packages only, and only for consumption off the licensed premises in accordance with the Kentucky Revised Statutes.

*Distilled spirits and wine retail drink license.* A distilled spirits and wine retail drink license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises in accordance with the requirements of the Kentucky Revised Statutes. A retail drink license shall not authorize the sale of distilled spirits or wine by the package.

*Restaurant wine license.* A restaurant wine license shall authorize sale of wines for consumption on the premises by restaurants meeting the requirements set out in the Kentucky Revised Statutes.

*Special private club license.* A special private club license may be issued to any 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. This license shall authorize the licensee to exercise the privilege of a distilled spirits and wine retail drink license at the designated premises if the general public is excluded. All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee shall apply to a special private club licensee.

*Caterer's license.* A caterer's license shall authorize the licensee to purchase and store alcoholic beverages, transport, sell, serve and deliver alcoholic beverages by the drink, receive and fill orders for alcoholic beverages and receive payment for alcoholic beverages served at a function on a by-the-drink or by-the-function basis in accordance with the Kentucky Revised Statutes. A city caterer's license is required when the premises serving as the caterer's commissary is located in the City of Winchester, Kentucky or when the location at which alcoholic beverages are sold, served or delivered by a caterer is in the city.

*Malt beverage distributor's license.* A distributor's license shall authorize the licensee to conduct the business authorized for such a license by the Kentucky Revised Statutes.

*Wholesaler's distilled spirits and wine license.* A wholesaler's license shall authorize the licensee to conduct the business authorized for such a license by the Kentucky Revised Statutes.

The fees for these licenses shall be as follows:

Retail Malt Beverage License:

Fee per year .....\$200.00

Fee per Half Year .....100.00

Distilled spirits and wine retail package license, per annum:

Fee per year .....800.00



Fee per half year .....400.00

Retail drink license: Distilled spirits and wine retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:

Fee per year .....800.00

Fee per half year .....400.00

Restaurant wine license fee per year .....400.00

Fee per half year .....200.00

Special private club license fee per year .....300.00

Fee per half year .....150.00

Caterer's license fee per year .....800.00

Fee per half year .....400.00

Malt beverage distributor's license fee per year .....400.00

Fee per half year .....200.00

Wholesaler's distilled spirits and wine license fee per year .....1,500.00

Fee per half year .....750.00

Dates licenses expire are in accordance with KRS 243.090(1)(2)(3)

*(Ord. No. 922, § 5, 6-26-73; Ord. No. 7-79, § 1, 6-26-79; Ord. No. 12-94, § I, 5-17-94; Ord. No. 11-2008, § I, 6-17-08; Ord. No. 12-2010, § I, 6-15-10)*

*State law reference— Restaurant wine license, KRS 243.032; function of alcoholic beverage control board over licenses, KRS 241.060 (2).*

### **Sec. 3-34. Quotas.**

Quotas for the various licenses authorized by this article shall be those from time to time fixed by regulations of the state alcoholic beverage control board adopted pursuant to KRS section 241.060.

*(Ord. No. 864, § 1, 11-17-70; Ord. No. 922, § 5, 6-26-73; Ord. No. 17-82, § II, 8-3-82)*

### **Sec. 3-35. Fees.**

Fees for any license issued under provisions of this article shall be in such amounts and under such conditions as the board of commissioners shall from time to time ordain or otherwise lawfully establish, subject to restrictions provided by state law.

*Cross reference— Liquor by the drink license tax, § 9-57.*

*State law reference— City licenses; fees, KRS 243.070.*

### **Sec. 3-36. License period; prorating and abatement of fees.**

All licenses issued pursuant to this article shall expire on dates as set forth in KRS 243.090 (1) of the provision of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky and all amendments and supplements thereto, are adopted as far as applicable as a portion of this subchapter except as otherwise lawfully provided herein. When any person applies for a license after the established expiration dates per KRS 243.090(1) shall be charged, if the license is issued, fees as set forth in section 3-33 or until the expiration dates as established by KRS 243.090 (1). No abatement of license fee shall be permitted to any person who held a license pursuant to this article for the same premises in the preceding license period and who was actually doing business under

the license during the last month of the proceeding license period. A copy of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky is on file in the office of the city clerk for the City of Winchester and is hereby adopted by reference and made a part hereof as though copied at length herein.

*(Ord. No. 864, § 2, 11-17-70; Ord. No. 14-2001, § 1, 8-21-01; Ord. No. 11-2008, § II, 6-17-08)*

*State law reference— Date licenses expire, reduction in fee for licenses less than year, KRS 243.090.*

### **Sec. 3-37. Persons who may not be licensed.**

- (a) No license shall be granted under this article to any person not of good moral character and a full citizen of the United States and of Kentucky; nor shall any license be issued to any person who has habitually been a petty law offender, or has been convicted of an offense against the laws of the state punishable by imprisonment in the state prison, unless the person so committed has been duly pardoned. The provisions of this section shall not apply to a corporation authorized to do business in Kentucky, but such provisions except the residence requirements shall apply to all officers and directors of any such corporation.
- (b) No such license shall be granted to any person under twenty-one (21) years of age.
- (c) No such license shall be granted to any corporation when more than fifty (50) per cent of the stock interest, legal or beneficial, is held by any person or persons not eligible for a license under this article.

*(Ord. No. 181, § 7, 4-13-34; Ord. No. 864, § 5(a), (b), (i), 11-17-70; Ord. No. 16-89, § 1, 8-22-89)*

*State law reference— Persons who may not be licensed, KRS 243.100.*

### **Sec. 3-38. Premises for which licenses not to be issued.**

- (a) No license shall be granted for any premises that is located within a residential district except that a special private club license may be issued and, if so, a malt beverage license may be issued to the same licensee holding a special private club license for the same premises. Any premises shall be deemed to be included within a residence district if two-thirds (2/3) of the buildings within a radius of five hundred (500) feet are used exclusively for residence purposes or the uses incidental thereto, regardless of the zoning classification of the property.
- (b) No license shall be granted any applicant if he/she owns the premises at which the business is to be located and those premises have delinquent property taxes. No license shall be granted for any business operation which has delinquent payroll taxes until such taxes are paid. No license shall be granted to any applicant who has delinquent property taxes or delinquent payroll taxes for another business located within the city.
- (c) No license shall be issued unless the premises to be licensed conform to the sanitary, safety and health requirements of the city and the rules and regulations of the state board of health applicable to restaurants.
- (d) No license shall be granted nor shall any application be accepted for any premises unless there is an established business operating upon the premises or the premises is at the time of the application ready to commence business.

*(Ord. No. 181, § 7, 4-13-34; Ord. No. 864, § 5(c), (d), (f), (g), 11-17-70; Ord. No. 869, §§ 1, 2, 12-29-70; Ord. No. 30-90, § 1, 8-28-90; Ord. No. 14-94, § 1, 5-17-94; Ord. No. 7-98, § 1, 5-19-98; Ord. No. 11-2001, § 1, 8-7-01)*

*State law reference— Premises that may not be licensed for sales at retail, KRS 243.220; premises for which retail package and drink licenses may not be issued, KRS 243.230.*



**Sec. 3-39. Conspicuous posting required.**

Every license and permit issued pursuant to this article shall be posted while in force in a conspicuous place in the room or place where intoxicating liquors are kept for sale.

*(Ord. No. 181, § 8, 4-13-34; Ord. No. 864, § 6, 11-17-70)*

*State law reference— Posting of licenses, KRS 243.620.*

**Sec. 3-40. Duplicates.**

Whenever a license or permit shall be lost or destroyed without fault on the part of the holder or his agent or employee, a duplicate in lieu thereof under the original application shall be issued by the city clerk on satisfying himself as to the facts, upon the payment of a renewal fee of ten dollars (\$10.00).

*(Ord. No. 181, § 8, 4-13-34; Ord. No. 864, § 6, 11-17-70)*

*State law reference— Lost or destroyed license, KRS 243.620(3).*

**Sec. 3-41. Conditions to which license subject.**

All licenses granted hereunder shall be granted subject to the following conditions as well as any other conditions of this article, and subject to all other statutes or regulations of the city or commonwealth applicable thereto:

- (1) Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the city or commonwealth at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of city ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- (2) No person, firm or corporation holding a license under the provisions of this article shall sell any intoxicating alcoholic liquor behind blinds or screens, but such sales shall be conducted openly and without any attempt to hide it or screen it from public view.
- (3) Each licensed premises shall at all times be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- (4) No gambling or game of chance of any sort shall be permitted in any form upon the licensed premises. Dice, slot machines, or any device of chance are prohibited and shall not be kept upon the premises.
- (5) Any retailer under this section obtaining a license shall complete and submit to the city, on a yearly basis, a list of all wholesalers of alcoholic beverages from whom the licensee purchases distilled spirits and wine beverages.

*(Ord. No. 181, § 9, 4-13-34; Ord. No. 864, § 7, 11-17-70; Ord. No. 12-2010, § 1, 6-15-10)*

**Sec. 3-42. Transferability.**

No license issued under provisions of this article shall be transferable either as to license or location except as provided in this article or by state law.

*(Ord. No. 181, § 7(j), 4-13-34)*



*State law reference— Transfer of license without authorization prohibited, KRS 243.630; transfer of license to other premises, KRS 243.650.*

### **Sec. 3-43. Disposition of taxes and forfeited bonds.**

All money derived from the collection of license taxes herein provided for, and all money derived from the forfeiture of bonds herein provided for, shall be paid into and become a part of the general fund of the city.

*(Ord. No. 181, § 12, 4-13-34; Ord. No. 864, § 10, 11-17-70)*

### **Sec. 3-44. Penalties.**

- (a) Any person commencing the operation of a business required to be licensed under provisions of this article without first having acquired such license shall, upon conviction, be assessed the penalties provided therefor by statute, and, in all other cases, such person shall, upon conviction, be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), with each day of operation without a license to be a separate offense. Violation of any other of the provisions of this article shall, if a statutory offense, be assessed the penalty provided by statute, and, in all other cases, violators shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), and if the violation is a continuing violation each day shall constitute a separate offense.
- (b) Fees for all licenses issued under this chapter shall be due and payable as set out herein and penalty of ten (10) percent of the applicable license fee is hereby imposed with respect to any license issued which is not purchased within thirty (30) days after it becomes due and payable. An additional ten (10) percent penalty is hereby imposed for each additional calendar month of delinquency of the applicable license fee.

*(Ord. No. 922, § 9, 6-26-73; Ord. No. 23-2005, § 1, 10-18-05)*

### **Secs. 3-45—3-50. Reserved.**

Winchester, Kentucky, Code of Ordinances >> DIVISION 2. APPLICATION >>DIVISION 2. APPLICATION <sup>[4]</sup>

Sec. 3-51. To whom made; verification; information required.

Sec. 3-52. Clerk to assist illiterate or injured applicant.

Sec. 3-53. Reserved.

Sec. 3-54. Advertising; protest; docketing for hearing.

Secs. 3-55—3-60. Reserved.

**Sec. 3-51. To whom made; verification; information required.**

Any person desiring to obtain a license to conduct any of the businesses for which a license is required under provisions of this article, whether by original issue or by transfer, shall file with the city clerk in his own handwriting a verified application containing the following information:

- (1) The name, age, social security number, residence, address and addresses for the past ten (10) years of each applicant and if there is more than one and they are partners, the partnership name and address, and the facts as to their citizenship;
- (2) The name and address of each person interested or to become interested in the business for which the license is sought, together with the nature of that interest and if the applicant is a corporation, the names, addresses and ages of each officer, director, manager and employee, the facts as to their citizenship, and the state under which laws such corporate applicant is incorporated. The city licensing board may require the names of all of the stockholders;
- (3) The premises to be licensed, stating the street and number, if the premises has a street and number, and otherwise such a description as will reasonably indicate the location of the premises. The applicant shall also state the nature of his interest in the premises, and the name, age and address of any other person, either as principal or associate, who is interested with the applicant, either in the premises or in the business to be licensed, and the facts as to his citizenship;
- (4) A statement that neither the applicant nor any other person referred to in this section has been convicted of any misdemeanor directly or indirectly attributable to the use, manufacture, sale of or traffic in alcoholic beverages, or any felony whatever, within two (2) years preceding the application, and that no license issued to him under any alcoholic beverage statute has been revoked for cause within two (2) years prior to the date of the application; and
- (5) A statement that the applicant will in good faith abide by every statute and ordinance relating to the manufacture, sale and transportation of alcoholic beverages that may be in force in the location at which he seeks to do business, as well as all regulations of the board.
- (6) Proof of publication of notice of intention to apply for license in compliance with Kentucky Revised Statutes, Section 243.360.

*(Ord. No. 181, § 6, 4-13-34; Ord. No. 922, § 6A, 6-22-73)*

*Cross reference— City licensing board, Ch. 9, Art. III.*



**Sec. 3-52. Clerk to assist illiterate or injured applicant.**

If the applicant for any license authorized to be issued under this article is unable to write by reason of lack of education or injury, the city clerk may fill out the required application, after which it shall be read back to the applicant, corrections noted, and the application signed by the applicant making an "X," said type signature to be verified by the city clerk, together with a statement:

I have filled out this application upon the direction of the applicant and he has verified it in my presence.

Signed \_\_\_\_\_  
City Clerk

(Ord. No. 922, § 6B, 6-26-73)

**Sec. 3-53. Reserved.**

*Editor's note—*

Ord. No. 8-2002, § 1, adopted April 16, 2002, repealed former section 3-53 in its entirety which pertained to a deposit and bond requirement for applications under this article and derived from Ord. No. 181, § 6, 4-13-34; Ord. No. 922, § 6C, 6-22-73; Ord. No. 22-84, § 1, 9-25-84; Ord. No. 5-94, § 1, 3-15-94.

**Sec. 3-54. Advertising; protest; docketing for hearing.**

- (a) After an application has been filed in compliance with the requirements of this division, the applicant applying for a license shall advertise by publication in a newspaper as defined in KRS 424.110 for two (2) days. The notice shall conform in all material respects to the following requirements:
- (1) The notice shall state: The name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;
  - (2) The notice shall specifically state the location of the premises for which the license is sought and the type of license(s) being requested; and
  - (3) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing to the City Clerk within ten (10) days of the last date of legal publication."
- (b) Any protest received after the ten (10) day period has expired shall not be considered a valid legal protest by the board.
- (c) The application shall then be docketed for hearing at the next regular meeting of the city licensing board held after the time for filing protests has expired, and for this purpose the city clerk shall keep a separate book noting thereon the time the application was filed, the time any notice required herein was sent or mailed and the results thereof, and the city clerk shall, in writing advise the chairman of the board of the status of each application at least twenty-four (24) hours prior to its regular meeting date.

(Ord. No. 922, § 6D, 6-26-73; Ord. No. 8-2002, § 1, 4-16-02)

**Secs. 3-55—3-60. Reserved.**

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FOOTNOTE(S):

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*State Law reference— Applications for state licenses, KRS 243.380. ([Back](#))*

Winchester, Kentucky, Code of Ordinances >> DIVISION 3. ISSUANCE, DENIAL AND RENEWAL >>**DIVISION 3. ISSUANCE, DENIAL AND RENEWAL**

Sec. 3-61. Action of city licensing board on application for license; clerk to issue approved licenses.

Sec. 3-62. Reliance by board upon information provided; presumption of correctness; materiality.

Sec. 3-63. Report of changes in fact after license issued.

Sec. 3-64. Renewal of licenses; action by board on transfer or failure to renew.

Sec. 3-65. Appeals from board action.

Secs. 3-66—3-71. Reserved.

**Sec. 3-61. Action of city licensing board on application for license; clerk to issue approved licenses.**

- (a) *When no protest filed.* If no protest is filed as prescribed by section 3-54, and the city licensing board finds that the application is in due form, and that the applicant is a desirable licensee, the board shall grant the license applied for at its next regular meeting without a formal hearing, and the city clerk shall, subject to section 3-31 hereof, thereupon issue said license or licenses. If the board finds that the applicant is not desirable, it shall deny the license.
- (b) *When protest filed.* If one or more written protests are filed, then the city licensing board shall set the matter down for public hearing and shall give due notice of the time and place thereof to the applicant, any protestants of record, and the alcoholic beverage control administrator, by mail, and to the public by publishing notice of said hearing one time in The Winchester Sun at the expense of the applicant, at which time the board shall proceed to hear any evidence relating to the factors to be considered under section 3-54 of this article.

(Ord. No. 922, § 6, 6-26-73; Ord. No. 22-84, § II, 9-25-84)

**Sec. 3-62. Reliance by board upon information provided; presumption of correctness; materiality.**

In giving any notice, or taking any action in reference to a license, the city licensing board may rely upon the information furnished in the application or in the supplemental statement connected with the application. Such information as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application, or supplemental notice of change under section 3.63, shall be deemed material in any prosecution for perjury.

(Ord. No. 922, § 6, 6-26-73)

**Sec. 3-63. Report of changes in fact after license issued.**

If, after a license has been issued, there is a change in any of the facts required in the application for license, the licensee shall notify the city licensing board in writing of such change within ten (10) days after knowledge thereof.



(Ord. No. 922, § 6, 6-26-73)

**Sec. 3-64. Renewal of licenses; action by board on transfer or failure to renew.**

Licenses issued under provisions of this article may be renewed annually without further action of the city licensing board until revoked; provided, however, that action by the board as provided in section 3-61 shall be required for proposed transfer of a license or when the licensee has failed to renew his license.

(Ord. No. 922, § 6, 6-26-73)

**Sec. 3-65. Appeals from board action.**

- (a) Within a period of ten (10) days after the hearing, the licensee, or the applicant, as the case may be, or any aggrieved protestant of record may appeal the findings of the city licensing board by filing with the city clerk a copy of the order of the board with a formal statement setting out the portions of the order with which he disagrees. The city clerk shall thereupon note on the order the time and date of the filing, and shall promptly notify the mayor or, in his absence, the vice-mayor, in writing, stating the substantial facts of the appeal and shall preserve the record until docketed by the full board of commissioners for hearing, and the matter shall be set down for hearing de novo by the board of commissioners.
- (b) Notice of the time, place and purpose of the appeal shall be sent to the party or parties by the city clerk, in the mode and manner provided in subsection (a), at least three (3) days prior to the time set for the hearing. Pending appeal from a board action suspending or revoking a license, the ruling of the board shall be suspended.

(Ord. No. 922, § 8, 6-26-73)

**Secs. 3-66—3-71. Reserved.**

Winchester, Kentucky, Code of Ordinances >> **DIVISION 4. SUSPENSION OR REVOCATION >>****DIVISION 4. SUSPENSION OR REVOCATION** <sup>[5]</sup>

Sec. 3-72. Grounds for revocation generally.

Sec. 3-73. Acts authorizing suspension or revocation enumerated; declared public nuisance.

Sec. 3-74. Procedure.

Sec. 3-75. Effect of revocation.

Secs. 3-76—3-90. Reserved.

**Sec. 3-72. Grounds for revocation generally.**

A violation of this article by any agent or employee of a licensee or permit holder shall constitute a violation by the licensee or permit holder, and whenever the holder of any license or permit under this article shall violate any portion of the article or any regulation adopted pursuant thereto, the city clerk may be instructed to cancel or revoke such license.

*(Ord. No. 181, § 10, 4-13-34; Ord. No. 864, § 8, 11-17-70)*

**Sec. 3-73. Acts authorizing suspension or revocation enumerated; declared public nuisance.**

- (a) Any license issued under provisions of this article may be suspended or revoked when the licensee, or any of his agents, clerks, servants or employees either by permission or in disobedience of the licensee's instruction:
- (1) Has made a false material statement in an application for this or any other license;
  - (2) Has been formally charged with a violation of the provisions of any Kentucky statute or any city ordinance, including this article, relating to the operation of said licensed business or relating to the operation of any other business on the premises;
  - (3) Has been formally charged with selling any illegal beverages on the licensed premises or elsewhere;
  - (4) Has been formally charged with any violation of law relating to the regulation of the manufacture, sale and transportation of alcoholic beverages;
  - (5) Has been formally charged with a violation of any act of congress or any rules or regulations of any federal board, agency or commission relating to the regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or any rules and regulations of any local alcoholic beverage authority or any similar body heretofore in existence;
  - (6) Has committed any act or omission for which any such license may be revoked by the state alcoholic beverage control board, in the exercise of its sound discretion;
  - (7) Has committed any act or omission which would constitute reason for which the alcoholic beverage control administrator would have been required to refuse a license had the facts been known;
  - (8)



- Has failed to pay any occupational license fee levied by the city upon any business operated by the licensee, or has failed to obtain a city license where required;
- (9) Has set up, conducted, operated or kept on the licensed premises, any gambling game, gambling device, gambling machine, gambling contrivance, lottery, gift enterprise, handbook or facility for betting or transmitting bets on horse races and athletic events;
- (10) Has permitted known gamblers, prostitutes, persons of immoral character, or juveniles to congregate on the licensed premises;
- (11) Has failed to secure or maintain proper certificates from the board of health when required to do so by any provisions of this Code or other city ordinance, statute or administrative regulations;
- (12) Has given, sold, loaned or otherwise transferred or attempted to transfer said license to another without proceeding in the manner required by law;
- (13) Has failed to keep any distilled spirits or wine or malt beverages for consumption on the premises in a locked room or locked container upon premises in which business is being conducted during hours or at times other than the hours or times during which such distilled spirits or wine or malt beverages for consumption on the premises may be sold pursuant to Kentucky statutes or ordinance of the City of Winchester, Kentucky.
- (b) Each of the acts enumerated in subsection (a) as causes for suspension or revocation is hereby declared to constitute a public nuisance.

*(Ord. No. 922, § 7A, 6-26-73; Ord. No. 9-97, § 1, 3-4-97)*

*Cross reference— Nuisances, Ch. 11, Art. II.*

### Sec. 3-74. Procedure.

- (a) When any person shall file with the city clerk a verified charge that a licensee has committed one or more of the acts enumerated in section 3-73(a) the matter shall be docketed for hearing at the next regular meeting of the city licensing board at which time it shall proceed to hear the charges. The charges shall be in writing, shall be signed and verified and shall set out clearly the charges made, and the licensee in question shall be served with a copy of such charges by the city clerk and a statement of the day, place and hour of hearing at least three (3) days prior to the hearing. It shall be sufficient to prove service by a written statement from the city clerk that a copy of the charges and notice of hearing were placed in the United States mail with proper and sufficient postage stamps, affixed thereon, addressed to the last known address of the licensee or applicant, as the case may be. The clerk may personally serve any notice required herein and make a due return on a copy of said notice.
- (b) If any two (2) members of the city licensing board are of the opinion that probable cause exists for revocation of a license issued under provisions of this article, the board may immediately suspend such license pending hearing, by filing an order to that effect with the city clerk, who shall at once cause a copy of said order to be served upon the licensee in the manner and form set out in subsection (a). Such hearing shall be held within three (3) days after the date of suspension of the license.

*(Ord. No. 922, § 7B, 6-26-73)*

*State law reference— Institution of revocation proceedings by state administrator, KRS 243.520; conduct of hearing by state board, KRS 243.550.*

### Sec. 3-75. Effect of revocation.

Any licensee whose license has been revoked in the manner provided in this article shall not be eligible to obtain any city alcoholic beverage license for a period of two (2) years thereafter.

*(Ord. No. 181, § 7(f), 4-13-34; Ord. No. 864, § 5(c), 11-17-70; Ord. No. 922, § 7C, 6-26-73)*

*State law reference— Effect of revocation on eligibility for license, KRS 243.100(5).*

**Secs. 3-76—3-90. Reserved.**

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**FOOTNOTE(S):**

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*State Law reference— Causes for which licenses may be revoked, KRS § 243.490; causes for which licenses must be revoked or suspended, KRS § 243.500. [\(Back\)](#)*

Winchester, Kentucky, Code of Ordinances >> ARTICLE IV. SEXUALLY ORIENTED BUSINESSES >>ARTICLE IV. SEXUALLY ORIENTED BUSINESSES

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Sec. 3-108. Additional regulations concerning public nudity.

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Sec. 3-113. Prohibition against children in a sexually oriented business.

Sec. 3-114. Hours of operation.

Sec. 3-115. Exemptions.

Sec. 3-116. Injunction and penalties.

Sec. 3-117. Severability.

**Sec. 3-91. Purpose and findings.**

- (a) *Purpose.* It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city and county (hereafter sometimes called the county since the city is contained within the county), and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the county. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials.
- (b)



*Findings.* Based on evidence concerning the adverse secondary effects of adult uses on the community presented in information presented to the board of commissioners on September 7, 1999, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to: Brighton, Adams County, Colorado reported in the minutes of the meeting of the board of commissioners held September 21 1999; Los Angeles, California reported in the minutes of the meeting of the board of commissioners held October 5, 1999; Town of Islip, New York reported in the minutes of the meeting of the board of commissioners held October 19, 1999; Indianapolis, Indiana reported in the minutes of the meeting of the board of commissioners held November 3, 1999; Houston, Texas reported in the minutes of the meeting of the board of commissioners held November 16, 1999; Amarillo, El Paso, Cleburne, Austin, Beaumont, and Arlington, Texas; Las Vegas, Nevada; St. Paul, Minnesota, New York City (and Times Square) New York; St. Croix County, Wisconsin; Phoenix, Arizona and Georgetown, Kentucky reported in the minutes of the meeting of the board of commissioners held on December 7, 1999, and statistics obtained from the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention, and based on evidence concerning the adverse secondary effects of adult uses on the community presented in reports and studies made available to the magistrates of Clark County, including those set out in the preceding paragraph, the board of commissioners and magistrates find as follows:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities. Further, there is presently no mechanism to hold the owners of these establishments responsible for the activities that occur on their premises.
- (2) Certain employees of sexually oriented businesses defined in this article as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such space encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- (6) At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B, amebiasis, salmonella infections and shigella infections.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States—600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, 253,448 through December 31, 1992 and 688,200 through December 31, 1998.
- (8) There are over 250 reported cases of AIDS in the State of Kentucky per year.
- (9) The number of cases of early (less than one (1) year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990. There are currently approximately 70,000 new cases of syphilis, all stages, each year in the United States.
- (10)



The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990 and approximately 650,000 cases reported to the Center for Disease Control, annually, at the present time. Louisville, Kentucky is currently the U.S. city with 12th highest rate of infection according to the Center for Disease Control with an infection rate approximately five (5) times the average national rate.

- (11) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (12) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (13) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- (14) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.
- (15) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.
- (16) Nude dancing in adult establishments encourages prostitution, increases sexual assaults and attracts other criminal activity.
- (17) The findings noted in paragraphs number (1) through (16) raise substantial governmental concerns.
- (18) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (19) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the city and county. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- (20) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.
- (21) The fact that an applicant for a sexually oriented business operator's or employee license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this article. The barring of such individuals from operation or employment in sexually oriented businesses for a period of five (5) years serves as a deterrent to further criminal conduct.
- (22) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.



- (23) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this article is designed to prevent or who are likely to be witnesses to such activity.
- (24) The general welfare, health, morals and safety of the citizens of the county will be promoted by the enactment of this article.

(Ord. No. 12-2000, § 1, 7-18-00)

### Sec. 3-92. Definitions.

[The following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:]

- (1) *Adult arcade* means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- (2) *Adult bookstore* or *adult video store* means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
  - (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
  - (b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore," or "adult video store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore" or "adult video store" so long as a significant business purpose is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." A use may be significant without being a primary use of an establishment as long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

- (3) *Adult cabaret* means a nightclub, bar, restaurant, or similar commercial establishment which regularly, commonly, habitually or consistently features:
  - (a) Persons who appear in a state of nudity or semi-nude; or
  - (b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
  - (c) Films, motion pictures, video cassettes, slides, photographic reproductions or other image producing devices which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
  - (d) Persons who engage in exotic or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
- (4) *Adult motel* means a hotel, motel or similar commercial establishment which:

- (a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
  - (b) Offers a sleeping room for rent for a period of time that is less than six (6) hours; or
  - (c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than six (6) hours.
- (5) *Adult motion picture theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (6) *Adult theater* means a theater, concert hall, auditorium, or similar commercial establishment which regularly, commonly, habitually, or consistently features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- (7) *Employee* means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises if such person's presence is occasional nor does "employee" include a person exclusively on the premises as a patron or customer.
- (8) *Escort* means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (9) *Escort agency* means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (10) *Establishment* means and includes any of the following:
- (a) The opening or commencement of any sexually oriented business as a new business;
  - (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  - (c) The additions of any sexually oriented business to any other existing sexually oriented business;
  - (d) The relocation of any sexually oriented business; or
  - (e) A sexually oriented business or premises on which the sexually oriented business is located.
- (11) *Licensed day-care center* means a facility licensed by the State of Kentucky and situated within Clark County, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.



- (12) *Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- (13) *Live theatrical performance* means a play, skit, opera, ballet, concert, comedy or musical drama.
- (14) *Licensing board* means the city licensing board created in Section 9-40 of the Code of Ordinances of the City of Winchester, Kentucky. The enactment of this ordinance by Clark County, Kentucky delegates and establishes authority in the city licensing board, herein called the licensing board, throughout all of Clark County, Kentucky, as well as the City of Winchester, Kentucky, for all purposes herein stated in connection with the implementation of this article, the administration of this article and the issuance of sexually oriented business licenses and sexually oriented business employee licenses.
- (15) *Nude model studio* means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.
- (16) *Nudity or a state of nudity* means the showing of the human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals or vulva with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola or human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (17) *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (18) *Premises* means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to section 3-94
- (19) *Semi-nude or in a semi-nude condition* means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
- (20) *Sexual encounter center* means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - (b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.
- (21) *Sexually oriented business* means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- (22) *Specified anatomical areas* means:
- (a) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
  - (b) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.



- (23) *Specified criminal activity* means any of the following offenses:
- (a) Prostitution or promotion of prostitution offenses or the offense of maintaining a house of prostitution found in the Kentucky Penal Code or other Kentucky Revised Statutes or Federal laws (including those offenses currently at KRS chapter 529 and KRS chapter 233); pornography and/or sexual exploitation of minors (including those offenses currently at KRS chapter 531) including distribution of obscene matter, distribution of obscene matter to minors, using minors to distribute obscene material; advertising obscene material, promoting the sale of obscenity, using a minor in a sexual performance, promoting a sexual performance by a minor, possession of matter portraying a sexual performance by a minor, distribution of matter portraying a sexual performance by a minor, promoting the sale of or advertising material portraying a sexual performance by a minor or using minors to distribute material portraying a sexual performance by a minor; engaging in organized criminal activity; sexual offenses found in the Kentucky Penal Code or other Kentucky Revised Statutes or Federal laws (including those offenses currently at KRS chapter 510) including rape, sodomy, sexual abuse, sexual misconduct and indecent exposure; molestation of a child; gambling (including those offenses currently at KRS chapter 528); or distribution of, selling, trafficking or otherwise committing a prohibited practice concerning a controlled substance (including those offenses currently at KRS chapter 218A) other than possession thereof; or any similar offenses to those described above under the criminal or penal code of the United States of America, any state or any country;
  - (b) For which:
    1. Fewer than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
    2. Fewer than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
    3. Fewer than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.
  - (c) The fact that a conviction is being appealed shall not prevent disqualification of the applicant.
- (24) *Specified sexual activities* means any of the following:
- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
  - (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
  - (c) Masturbation, actual or simulated; or
  - (d) Excretory functions as part of or in connection with any of the activities set forth in (a) and (b) above.
- (25) *Substantial enlargement* of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25) per cent, as the floor areas exist on the date this article takes effect.
- (26)

*Transfer of ownership or control* of a sexually oriented business means and includes any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute a ten (10) per cent or greater interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of at least ten (10) per cent of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. No. 12-2000, § II, 7-18-00)

### **Sec. 3-93. Classification.**

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers.

(Ord. No. 12-2000, § III, 7-18-00)

### **Sec. 3-94. License required.**

- (a) It is unlawful:
  - (1) For any person to operate a sexually oriented business without a valid sexually oriented business operator's license issued by the licensing board pursuant to this article.
  - (2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business if such employee is not in possession of a valid sexually oriented business employee license ("employee license") issued to such employee by the licensing board pursuant to this article.
  - (3) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the licensing board pursuant to this article.
  - (4) It shall be a defense to subsections (2) and (3) of this section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment or the premises.

Violation of any provision of this Subsection A shall constitute a violation.

- (b) An application for an operator's or employee's license must be made on a form provided by the licensing board. The licensing board is the city licensing board created in section 9-40 of the Code of Ordinances of the City of Winchester, Kentucky. For the purposes of implementation and administration of this article, the County of Clark designates the city licensing board, herein called the licensing board, to act on behalf of the County of Clark,



- Kentucky in the issuance of sexually oriented business licenses and sexually oriented business employee licenses.
- (c) All applicants for a license must be qualified according to the provisions of this article. The application may request and the applicant shall provide such information reasonably necessary (including fingerprints) as to enable the licensing board to determine whether the applicant meets the qualifications established herein.
- (d) If a person who wishes to own or operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) per cent or greater interest in the business must sign the application for an operator's license as applicant. If an owner or operator of a sexually oriented business is other than an individual, all persons with legal authority over day to day policy and/or operations must sign the application for an operator's license as applicant. (In the case of a corporation, all officers and directors must sign as applicant. In the case of a limited liability company or partnership, all managers whether members or not must sign as applicant. In the case of a general partnership, all partners must sign as applicant unless the written partnership agreement clearly vests day to day policy and management in fewer than all the partners under applicable law; only those with management or day to day policy authority must sign as applicant.) Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.
- (e) The completed application for a sexually oriented business operator's license shall contain the following information and shall be accompanied by the following documents:
- (1) If the applicant is:
    - a. An individual, the individual shall state his/her legal name and any aliases or other names ever used by such person and submit proof that he/she is eighteen (18) years of age;
    - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
    - c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and stockholders, and the name of the registered corporate agent and the address of the registered office for service of process;
    - d. A limited liability company (llc), the llc shall state its complete name, the date of its organization, evidence that the llc is in good standing under the laws of its state of organization and is authorized to do business in the Commonwealth of Kentucky, the names and capacity of all managers, officers, directors and members, a copy of the operating agreement, if any, and the name of the registered agent and the address of the registered office for service of process.
  - (2) The name under which the establishment is to be operated and a general description of the services to be provided. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state (1) the sexually oriented business's assumed name, and (2) submit the required registration documents.
  - (3) Whether the applicant has been convicted of a specified criminal activity as defined in this article, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.



- (4) Whether the applicant has had a previous license under this article or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or stockholder of a corporation or limited liability company that is licensed under this article whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- (5) Whether the applicant holds any other licenses under this article or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.
- (6) The single classification (as found in section 3-93) of license for which the applicant is filing.
- (7) The location of the proposed sexually oriented business, including a legal description of the property, street address, and the name, address and telephone number(s), if any, of the owner(s) of the property. If the applicant is not the owner of the property, the application must include a copy of the lease for the premises which extends to or beyond the term of the license applied for.
- (8) The applicant's street address and mailing address, if different.
- (9) A recent photograph of the applicant(s).
- (10) The applicant's driver's license number, Social Security number, and/or its state and federally issued tax identification numbers.
- (11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The premises will be inspected by the health department, building inspector and zoning department but a provisional license may be granted before inspections are completed as hereinafter specified.
- (12) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a Kentucky registered engineer or land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand (1,000) feet of the property to be certified and the property lines of any established licensed day care center, religious institution/synagogue, school, or public park, recreation area, or residential area (all as more specifically set out in section 3-103(c)) within five hundred (500) feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
- (13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in section 3-105 in addition to the foregoing requirements.
- (14) Any of items other than (1) and (8) above shall not be required for a renewal application if the applicant states that the documents previously furnished remain



correct and current unless the licensing board makes specific request for resubmittal for good cause shown.

- (f) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the licensing board the following information:
- (1) The applicant's name or any other name (including "stage" names) or aliases now or theretofore used by the individual;
  - (2) Age, date, and place of birth;
  - (3) Height, weight, hair and eye color;
  - (4) Present business address and telephone number;
  - (5) Date, issuing state and number of driver's license or other state issued identification card information;
  - (6) Social Security number; and
  - (7) Proof that the individual is at least eighteen (18) years of age.

The personal information provided in an employee application shall be confidential and shall not be disclosed to the public except as necessary to enforce the license terms of the article or to the extent required by law.

- (g) Attached to the application form for a sexually oriented business employee or operator license as provided above, shall be the following:
- (1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
  - (2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
  - (3) A statement whether the applicant has been convicted, within the past five (5) years, of a specified criminal activity as defined in this article and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
- (h) An applicant for any license under this article has a continuing, affirmative duty to provide correct information and to provide supplemental information subsequent to the initial submission so that all application information is correct at all times during the license.
- (i) Every application for a license under this article shall contain a statement under oath that:
- (1) The applicant (and each person required to sign the application) has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
  - (2) The applicant (and each person required to sign the application) has read the provisions of this subsection.
- (j) A separate application and operator's license shall be required for each sexually oriented business classification as set forth in section 3-93

(Ord. No. 12-2000, § IV, 7-18-00)

**Sec. 3-95. Issuance of license.**

Once a license application is complete, it shall be considered by the licensing board in the manner set forth elsewhere in the Code of Ordinances of the City of Winchester, Kentucky and hereinbelow. The provisions of this article shall control to the extent that there is an inconsistency with any other sections of the Code of Ordinances of the City of Winchester, Kentucky pertaining to the (city) licensing board.

- (a) Within fifteen (15) calendar days after receipt of a completed sexually oriented business or sexually oriented business employee application, the licensing board shall either: (a) approve or deny the issuance of a license to an applicant, or (b) shall issue a provisional license pending the completion of the licensing process. For these purposes, completion of the licensing process shall include review by the legislative body, if it grants a review of exceptions, and the exhaustion of legal remedies by the applicant. The licensing board shall approve the issuance of a license to an applicant unless it determines by a preponderance of the evidence that there is good cause for such denial. A sexually oriented business operator's or employee's license may be denied only for good cause.
- (b) Good cause to deny a sexually oriented business employee license may consist of, but is not limited to, any one of the following:
  - (1) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  - (2) The applicant is under the age of eighteen (18) years;
  - (3) The applicant has been convicted of a "specified criminal activity" as defined in this article;
  - (4) The sexually oriented business employee license is to be used for employment in a business prohibited by local ordinance or state law, statute, rule or regulation, or prohibited by a particular provision of this article;
  - (5) The applicant has been denied a sexually oriented business employee license by the city or county within twelve (12) months of the date of the current application or the applicant's sexually oriented business employee license has been revoked within the preceding twelve (12) months;
  - (6) The license fee required by this article has not been paid.
- (c) Good cause to deny a sexually oriented business operator's license may consist of, but is not limited to, one or more of the following:
  - (1) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
  - (2) An applicant is under eighteen (18) years of age.
  - (3) An applicant has been convicted of a "specified criminal activity" defined in this article.
  - (4) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances or a requisite state certificate of occupancy has not been received. It is provided, however, that the failure of the health department, fire department or state or local building official to act in a timely fashion will not be good cause to deny the issuance of a



- provisional license pending the receipt of the necessary action by such department or official.
- (5) An applicant has been denied a license by the city or county to operate a sexually oriented business within the preceding twelve (12) months or the applicant's license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
  - (6) The license fee required by this article has not been paid.
  - (7) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.
- (d) A license granted pursuant to this article shall be subject to annual renewal upon the written application of the applicant and a finding by the licensing board or legislative body that the applicant has not been convicted of any specified criminal activity as defined in this article or committed any other act during the existence of the previous license which would be good cause to deny the license renewal. The renewal of the license shall be subject to the payment of the fee as set forth in section 3-96
- (e) If the license application is approved by the licensing board, a provisional license shall be granted until the later of thirty (30) days after such approval or until final action (including the exhaustion of all remedies by the applicant) has been taken on such application.
- (1) A citizen who deems himself or herself aggrieved by licensing board approval may file exceptions with the city clerk within thirty (30) days after an application is approved but such exceptions shall be limited to one or more of the enumerated elements of good cause in subsections (b) or (c), supra.
  - (2) The appropriate legislative body (the board of commissioners of the City of Winchester, Kentucky if the application is for an employee license or a business license and the business or place of employment is to be located within the corporate limits of the City of Winchester, Kentucky or, if not, the Clark County Fiscal Court) shall consider the exceptions at its next regular meeting which is convened at least five (5) days after the end of the thirty (30) day exception period. At such meeting the legislative body may refuse to hear the exceptions or it may set the exceptions for a hearing by the legislative body at a regular or special meeting which shall be conducted within thirty (30) days thereafter. After hearing the exceptions, the legislative body shall either dismiss the exceptions or shall remand the matter for further consideration by the licensing board. Upon remand, the licensing board shall limit its inquiry to the issues stated in the remand order and it may reverse its earlier approval only after making findings of fact that its earlier approval was clearly erroneous. Exceptions may be heard only one time for each application or renewal.
- (f) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to section 3-93. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. When engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.
- (g) The health department, fire department, and local building official shall complete their certification that the premises is in compliance or not in compliance within a



reasonable time (usually not to exceed ten (10) days) of receipt of the application by the licensing board.

- (h) Denial, suspension, or revocation of a license issued pursuant to this article shall be subject to appeal as set forth in section 3-101. An applicant shall be given written notice of the denial, suspension, or revocation and the reasons therefor.

*(Ord. No. 12-2000, § V, 7-18-00)*

### **Sec. 3-96. Fees.**

- (a) Every application for a sexually oriented business operator's license (whether for a new license or for renewal of an existing license) shall be accompanied by a two hundred fifty dollar (\$250.00) non-refundable application and investigation fee.
- (b) In addition to the application and investigation fee required in (a) above, every sexually oriented business that is granted a license (new or renewal) shall pay to the licensing board an annual non-refundable license fee of eight hundred dollars (\$800.00) before license issuance or renewal.
- (c) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by a two hundred dollar (\$200.00) non-refundable application and investigation fee.
- (d) In addition to the application and investigation fee required in (c) above, every sexually oriented business employee who is granted a license (new or renewal) shall pay to the licensing board an annual non-refundable license fee of three hundred dollars (\$300.00) before license issuance or renewal.
- (e) All license applications and fees shall be submitted to the clerk of the city as agent of the Winchester licensing board whether the business is to be conducted within or without the city limits of Winchester, Kentucky. The city clerk shall promptly remit to the county treasurer all license fees, other than application fees, for businesses or employment to be conducted outside the city limits. If an employee license is issued to a person for employment in a sexually oriented business in both the city and county, the city clerk shall remit one-half (½) of the license fee, other than the application and investigation fee.
- (f) Fees shall be prorated, in increments no smaller than one month, if the license is for fewer than twelve (12) months.

*(Ord. No. 12-2000, § VI, 7-18-00)*

### **Sec. 3-97. Inspection.**

- (a) An applicant shall, at reasonable times, permit representatives of the Clark County Sheriff's Department, Winchester or Kentucky State Police Department, Clark County Health Department, Winchester or Clark County Fire Department, Winchester-Clark County Planning and Zoning and Winchester Code Enforcement Department, or other city or county departments or agencies to inspect the premises of a sexually oriented business for the purpose of determining eligibility for a license if the premises are not theretofore licensed.
- (b) The city and county authorities shall regularly inspect the premises of the sexually oriented business in order to determine compliance with the provisions of this article. An applicant or licensee shall permit representatives of the police department and/or health department to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under

this article; and to requests for identification of those individuals who reasonably appear to be under the age of eighteen (18).

- (c) A person who operates a sexually oriented business or his agent or employee commits a violation if he refuses to permit such lawful inspection of the premises at any time it is open for business.

*(Ord. No. 12-2000, § VII, 7-18-00)*

### **Sec. 3-98. Expiration and non-renewal of license.**

- (a) Each license shall expire on June 30th and may be renewed only by making application as provided in section 3-94. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be delayed.
- (b) When the licensing board denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. Notwithstanding the provisions of this section, in the event a licensee appeals the non-renewal of a license, the status quo immediately prior to a non-renewal shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits.

*(Ord. No. 12-2000, § VIII, 7-18-00)*

### **Sec. 3-99. Suspension.**

- (a) The licensing board shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:
- (1) Violated or is not in compliance with any section of this article;
  - (2) Refused to allow an inspection of the sexually oriented business premises as authorized herein.
- (b) Notwithstanding the provisions of this section, in the event a licensee appeals the suspension of a license, the status quo immediately prior to suspension shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits.

*(Ord. No. 12-2000, § IX, 7-18-00)*

### **Sec. 3-100. Revocation.**

- (a) The licensing board shall revoke a license if a cause of suspension in section 3-99 occurs and the licensee's license has been suspended within the preceding twelve (12) months.
- (b) The licensing board shall revoke a license if it determines that:
- (1) A licensee gave materially false or misleading information in the material submitted during the application process;
  - (2) A licensee has knowingly allowed possession, use, or sale of marijuana, controlled substances or alcoholic beverages on the premises;
  - (3) A licensee has knowingly allowed prostitution on the premises;
  - (4) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
  - (5) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act or specified sexual activity to occur in or on the licensed premises;
  - (6)



A licensee is delinquent in payment to the city or county for any taxes, fees, fines or penalties relating to the sexually oriented business or the premises thereon and does not pay same within thirty (30) days of request;

- (7) A licensee was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
  - (8) A licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter or remain in the establishment;
  - (9) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment; or
- (c) When the licensing board revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective.
- (d) Notwithstanding the provisions of this section, in the event a licensee appeals the revocation of a license, the status quo immediately prior to revocation shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits.

*(Ord. No. 12-2000, § X, 7-18-00)*

### **Sec. 3-101. Hearing de novo and judicial review.**

After denial of approval of an application, or denial of a renewal of an application, or suspension or revocation of any license by the licensing board, an aggrieved party (the applicant or licensee if the license was denied, suspended or revoked or renewal was denied; or a citizen of Winchester, or Clark County, Kentucky as the case may be, if the license was granted or renewed or if suspension or revocation of a license was denied after proceedings therefor) may request a hearing de novo before the board of commissioners of the City of Winchester or the fiscal court of the County of Clark, Kentucky, as the case may be, by filing a written request stating the grounds therefor within five (5) days after the action of the licensing board was communicated to the applicant or licensee by depositing same in the U.S. mails with the required postage thereon. The hearing de novo, limited to the grounds stated in the request for hearing, must be held within ten (10) days after the action by the licensing board. The legislative body will not overturn a finding of fact of the licensing board unless same is found to be clearly erroneous. If the denial, suspension or revocation is upheld by the legislative body, the applicant may seek judicial review of such administrative action in any court of competent jurisdiction and upon timely application for such review, a provisional license shall be granted until the review is completed or until a restraining order is entered.

*(Ord. No. 12-2000, § XI, 7-18-00)*

### **Sec. 3-102. Transfer of license.**

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application unless the transfer is approved by the licensing board.

*(Ord. No. 12-2000, § XII, 7-18-00)*

### **Sec. 3-103. Location of sexually oriented businesses.**

- (a)



A license may not be granted for a sexually oriented business to be operated in any zoning district other than B-3, B-4 or I-1 as defined and described in the Revised Zoning Ordinance for Clark County, Kentucky and the City of Winchester.

- (b) A person commits a violation if that person operates or causes to be operated a sexually oriented business in any zoning district other than B-3, B-4 or I-1, as defined and described in the Revised Zoning Ordinance for Clark County, Kentucky and the City of Winchester.
- (c) A person commits a violation if the person operates or causes to be operated a sexually oriented business within five hundred (500) feet of:
  - (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
  - (2) A public or private educational facility including but not limited to licensed day care facilities or other child care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
  - (3) A boundary of a residential district as defined in the Revised Zoning Ordinance for Clark County, Kentucky and the City of Winchester or the property line of a lot devoted to a residential use (e.g. planned development with a residential use);
  - (4) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the county which is under the control, operation, or management of the city or county park and recreation authorities;
- (d) A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business.
- (e) A person commits a violation if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
- (f) For the purpose of subsection (c) of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (c). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
- (g) For purposes of subsection (d) of this section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.
- (h) Any sexually oriented business lawfully operating on the effective date of this article that is in violation of subsection (b) through (g) of this section shall be deemed a nonconforming license. The nonconforming license will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming licenses shall not be increased, enlarged,



extended, or altered except that the license may be changed to a conforming license if the requirements therefor are complied with. If two (2) or more sexually oriented businesses are within (1,000) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming license and the later established business(es) is/are nonconforming.

- (i) A sexually oriented business lawfully operating as conforming is not rendered nonconforming by the location, subsequent to the grant or renewal of the sexually oriented business license, of a license for a use listed in subsection (c) of this section within five hundred (500) feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.
- (j) For purposes of this section, "person" includes the officers, directors and managing members or partners of a business entity.

*(Ord. No. 12-2000, § XIII, 7-18-00)*

### **Sec. 3-104. Additional regulations for adult motels.**

- (a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.
- (b) A person commits a violation if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.
- (c) For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

*(Ord. No. 12-2000, § XIV, 7-18-00)*

### **Sec. 3-105. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms.**

- (a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - (1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus



six (6) inches. The licensing board may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
  - (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the licensing board.
  - (4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  - (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
  - (6) It shall be the duty of the licensee to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.
  - (7) No viewing room may be occupied by more than one person at any time.
  - (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
  - (9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
  - (10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
  - (11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
  - (12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
  - (13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
  - (14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
- (b) A person having a duty under subsection (1) through (14) of subsection (a) above commits a violation if he knowingly fails to fulfill that duty. "Knowingly" includes both actual knowledge and a lack of actual knowledge if an ordinarily prudent person would have acquired knowledge under the circumstances.



(Ord. No. 12-2000, § XV, 7-18-00)

### **Sec. 3-106. Additional regulations for escort agencies.**

- (a) An escort agency shall not employ any person under the age of eighteen (18) years.
- (b) A person commits a violation if a person under the age of eighteen (18) years acts as an escort or if a person agrees to act as an escort for any person under the age of eighteen (18) years.

(Ord. No. 12-2000, § XVI, 7-18-00)

### **Sec. 3-107. Additional regulations for nude model studios.**

- (a) A nude model studio shall not employ any person under the age of eighteen (18) years.
- (b) A person under the age of eighteen (18) years commits a violation if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.
- (c) A person commits a violation if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- (d) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. No. 12-2000, § XVII, 7-18-00)

### **Sec. 3-108. Additional regulations concerning public nudity.**

- (a) It shall be a violation for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- (b) It shall be a violation for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two (2) feet from the floor.
- (c) It shall be a violation for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- (d) It shall be a violation for an employee, while semi-nude, to touch a customer or the clothing of a customer.

"Knowingly" includes both actual knowledge or a lack of actual knowledge if an ordinarily prudent person would have acquired knowledge under the circumstances.

(Ord. No. 12-2000, § XIII, 7-18-00)

### **Sec. 3-109. Exterior portions of sexually oriented businesses.**

- (a) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- (b)

It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this article.

- (c) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:
- (1) The establishment is a part of a commercial multi-unit center; and
  - (2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.
- (d) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.
- (e) A violation of any provision of this section shall constitute a violation.

*(Ord. No. 12-2000, § XIX, 7-18-00)*

### **Sec. 3-110. Signage.**

- (a) Notwithstanding any other applicable statute, ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than as provided herein.
- (b) The sign shall have no more than two (2) display surfaces. Each such display surface shall:
- (1) Not contain any flashing lights;
  - (2) Contain no photographs, silhouettes, drawings, or pictorial representations which in any manner depict any part of the nude or semi-nude human body or specified anatomical areas or specified sexual activities as defined herein whether nude or not.
  - (3) Contain no form of the words "sex" or "nude" or any other words alluding to specified anatomical areas or specified sexual activities as defined herein.
- (c) Violation of any provision of this section shall constitute a violation.

*(Ord. No. 12-2000, § XX, 7-18-00)*

### **Sec. 3-111. Sale, use, or consumption of alcoholic beverages prohibited.**

- (a) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.
- (b) Any violation of this section shall constitute a violation.

*(Ord. No. 12-2000, § XXI, 7-18-00)*

### **Sec. 3-112. Massages or baths administered by person of opposite sex.**

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this section shall constitute a violation.

*(Ord. No. 12-2000, § XXII, 7-18-00)*



**Sec. 3-113. Prohibition against children in a sexually oriented business.**

A person commits a violation if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business. Knowingly includes both actual knowledge or a lack of actual knowledge if an ordinarily prudent person would have acquired knowledge under the circumstances.

*(Ord. No. 12-2000, § XXIII, 7-18-00)*

**Sec. 3-114. Hours of operation.**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of midnight and eight o'clock (8:00) a.m. except that premises may remain open from midnight until 1:00 a.m. Saturday and Sunday and, notwithstanding the foregoing, the premises may not be open during the twenty-three (23) hours of Sunday beginning at 1:01 a.m. Violation of this section is a violation.

*(Ord. No. 12-2000, § XXIV, 7-18-00)*

**Sec. 3-115. Exemptions.**

- (a) It is a defense to prosecution under section 3-107 that a person appearing in a state of nudity did so in a modeling class operated:
- (1) By a proprietary school, licensed by the Commonwealth of Kentucky; a college, junior college, or university supported entirely or partly by taxation;
  - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
  - (3) In a structure:
    - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
    - b. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
    - c. Where no more than one nude model is on the premises at any one time.

*(Ord. No. 12-2000, § XXV, 7-18-00)*

**Sec. 3-116. Injunction and penalties.**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of section 3-102 or 3-103 of this article is subject to a suit for injunction as well as prosecution for violation and suspension or revocation of license. Violations shall be punishable as permitted by the Kentucky Revised Statutes. Each day a sexually oriented business so operates is a separate offense.

*(Ord. No. 12-2000, § XXVI, 7-18-00)*

**Sec. 3-117. Severability.**

If any section, subsection, or clause of this article shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

*(Ord. No. 12-2000, § XXVII, 7-18-00)*





**//Winchester, Kentucky/CODE OF ORDINANCES City of WINCHESTER, KENTUCKY  
Codified through Ord. No. 16-2008, enacted Aug. 5, 2008. (Supplement No. 55)/Chapter 3  
CERTAIN LICENSED BUSINESSES\*/ARTICLE I. GENERAL ALCOHOLIC BEVERAGE  
REGULATIONS**

**ARTICLE I. GENERAL ALCOHOLIC BEVERAGE REGULATIONS**

**Sec. 3-1. Licensed premises to be closed during specified times; exception.**

It shall be unlawful for any premises within the city for which there has been granted a license for the sale of distilled spirits, malt beverages or wine at retail to remain open for any purpose as hereafter stated:

- (1) The provision of the State Alcoholic Beverage Control laws contained in KRS Chapter 244.290(1) is hereby adopted as part of the alcoholic beverage regulations of the city;
- (2) As to a licensee for the sale of distilled spirits or wine, between midnight and 8:00 a.m. or at any time during the twenty-four (24) hours of Sunday except that the premises may remain open until 1:00 a.m. Saturday and 1:00 a.m. Sunday;
- (3) As to a licensee for the sale of malt beverages, between midnight and 6:00 a.m. or at any time during the twenty-four (24) hours of Sunday except that the premises may remain open until 1:00 a.m. Saturday and 1:00 a.m. Sunday;
- (4) Provided, however, that if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stock of distilled spirits, malt beverages and/or wine, and all fixtures and apparatus connected with his business as a licensee, and such separate department is kept locked during the times for which closure is required above, the licensee shall be deemed to have complied with this section. This provision does not apply to retail sale of malt beverages in package form.
- (5) Provided, further, however that a distilled spirits and/or wine retail drink licensee and/or licensee for the sale at retail of malt beverages for consumption on the premises may keep the licensed premises open until 1:00 a.m. on New Year's Day except when New Year's Day is on Monday.

(Ord. No. 268, § 1, 8-25-44; Ord. No. 601, § 1, 5-8-57; Ord. No. 606, §§ 1, 2, 10-1-57; Ord. No. 17-82, § 1, 8-3-82; Ord. No. 8-94, § 1, 5-3-94; Ord. No. 10-97, § 1, 3-4-97; Ord. No. 16-2001, § 1, 10-2-01)

**Sec. 3-2. Trafficking prohibited when establishments closed.**

It shall be unlawful for any licensee to sell, lend, deliver or give away distilled spirits or wine during the hours licensed premises are required to be closed as provided in section 3-1.

(Ord. No. 606, § 3, 10-1-57)

**Sec. 3-3. Penalties for violation of chapter.**

Except as may be otherwise specifically provided in this chapter, any person who shall violate

any provision of this chapter shall, upon conviction, be punished by a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or imprisoned for not more than six (6) months, or both, and in addition thereto his license shall be revoked. 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 for not more than six (6) months, or both. If the offender is a corporation, joint stock company, association or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

(Ord. No. 181, § 11, 4-13-34; Ord. No. 608, § 4, 10-1-57)

Secs. 3-4--3-15. Reserved.



**ARTICLE III. ALCOHOLIC BEVERAGE LICENSES\***

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**\*Cross references:** City licensing board, Ch. 9, Art. III.

**State law references:** License to traffic in alcoholic beverages, KRS 243.020 et seq.; city licenses, KRS 243.070 et seq.

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**DIVISION 1. GENERALLY****Sec. 3-30. License required.**

No person shall vend, sell, deal or traffic, or, for the purpose of evading any law or provision of this Code, give away any intoxicating liquor in any quantity whatever, or cause the same to be done, without having procured a license as provided in this article, nor without complying with all provisions of this article, and all statutes, ordinances and regulations applicable thereto.

(Ord. No. 181, § 2, 4-13-34)

**Sec. 3-31. State license prerequisite to city license.**

No license provided for in this article shall be granted, issued or sold to any person until such person shall have obtained from the state administrator a license as provided by state law.

(Ord. No. 181, § 4, 4-13-34)

**Sec. 3-32. Local approval required before application for state license.**

Any person intending to make application for a license for a premises within the city, or for the transfer of any existing liquor by the drink license, shall first make an application with and obtain the approval of the local licensing board as hereinafter provided before making application with the state alcoholic beverage control board.

(Ord. No. 864, § 3, 11-17-90)

**State law references:** Local administrator to approve application first, KRS 243.370.

**Sec. 3-33. Types of beverage licenses.**

There are hereby created the following types of alcoholic or malt beverage licenses:

*Malt beverage license.* A malt beverage license shall authorize the sale at retail of malt beverages in package form or for consumption on the premises in accordance with the Kentucky Revised Statutes.

*Retail package license.* A distilled spirits and wine retail package license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wine at retail in unbroken packages

only, and only for consumption off the licensed premises in accordance with the Kentucky Revised Statutes.

*Distilled spirits and wine retail drink license.* A distilled spirits and wine retail drink license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises in accordance with the requirements of the Kentucky Revised Statutes. A retail drink license shall not authorize the sale of distilled spirits or wine by the package.

*Restaurant wine license.* A restaurant wine license shall authorize sale of wines for consumption on the premises by restaurants meeting the requirements set out in the Kentucky Revised Statutes.

*Special private club license.* A special private club license may be issued to any 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. This license shall authorize the licensee to exercise the privilege of a distilled spirits and wine retail drink license at the designated premises if the general public is excluded. All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee shall apply to a special private club licensee.

*Caterer's license.* A caterer's license shall authorize the licensee to purchase and store alcoholic beverages, transport, sell, serve and deliver alcoholic beverages by the drink, receive and fill orders for alcoholic beverages and receive payment for alcoholic beverages served at a function on a by-the-drink or by-the-function basis in accordance with the Kentucky Revised Statutes. A city caterer's license is required when the premises serving as the caterer's commissary is located in the City of Winchester, Kentucky or when the location at which alcoholic beverages are sold, served or delivered by a caterer is in the city.

*Malt beverage distributor's license.* A distributor's license shall authorize the licensee to conduct the business authorized for such a license by the Kentucky Revised Statutes.

The fees for these licenses shall be as follows:

Retail Malt Beverage License:

Fee per year . . . \$200.00

Fee per Half Year . . . 100.00

Distilled spirits and wine retail package license, per annum:

Fee per year . . . 800.00

Fee per half year . . . 400.00

Retail drink license: Distilled spirits and wine retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:

Fee per year . . . 800.00

Fee per half year . . . 400.00

Restaurant wine license fee per year . . . 400.00

Fee per half year . . . 200.00

Special private club license fee per year . . . 300.00

Fee per half year . . . 150.00

Caterer's license fee per year . . . 800.00

Fee per half year . . . 400.00



Malt beverage distributor's license fee per year . . . 400.00

Fee per half year . . . 200.00

Dates licenses expire are in accordance with KRS 243.090(1)(2)(3)

(Ord. No. 922, § 5, 6-26-73; Ord. No. 7-79, § 1, 6-26-79; Ord. No. 12-94, § I, 5-17-94; Ord. No. 11-2008, § I, 6-17-08)

**State law references:** Restaurant wine license, KRS 243.032; function of alcoholic beverage control board over licenses, KRS 241.060 (2).

### **Sec. 3-34. Quotas.**

Quotas for the various licenses authorized by this article shall be those from time to time fixed by regulations of the state alcoholic beverage control board adopted pursuant to KRS section 241.060.

(Ord. No. 864, § 1, 11-17-70; Ord. No. 922, § 5, 6-26-73; Ord. No. 17-82, § II, 8-3-82)

### **Sec. 3-35. Fees.**

Fees for any license issued under provisions of this article shall be in such amounts and under such conditions as the board of commissioners shall from time to time ordain or otherwise lawfully establish, subject to restrictions provided by state law.

**Cross references:** Liquor by the drink license tax, § 9-57.

**State law references:** City licenses; fees, KRS 243.070.

### **Sec. 3-36. License period; prorating and abatement of fees.**

All licenses issued pursuant to this article shall expire on dates as set forth in KRS 243.090 (1) of the provision of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky and all amendments and supplements thereto, are adopted as far as applicable as a portion of this subchapter except as otherwise lawfully provided herein. When any person applies for a license after the established expiration dates per KRS 243.090(1) shall be charged, if the license is issued, fees as set forth in section 3-33 or until the expiration dates as established by KRS 243.090 (1). No abatement of license fee shall be permitted to any person who held a license pursuant to this article for the same premises in the preceding license period and who was actually doing business under the license during the last month of the proceeding license period. A copy of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky is on file in the office of the city clerk for the City of Winchester and is hereby adopted by reference and made a part hereof as though copied at length herein.

(Ord. No. 864, § 2, 11-17-70; Ord. No. 14-2001, § I, 8-21-01; Ord. No. 11-2008, § II, 6-17-08)

**State law references:** Date licenses expire, reduction in fee for licenses less than year, KRS 243.090.

### **Sec. 3-37. Persons who may not be licensed.**

(a) No license shall be granted under this article to any person not of good moral character and a full citizen of the United States and of Kentucky; nor shall any license be issued to any person who has habitually been a petty law offender, or has been convicted of an offense against the laws of the state punishable by imprisonment in the state prison, unless the person so

committed has been duly pardoned. The provisions of this section shall not apply to a corporation authorized to do business in Kentucky, but such provisions except the residence requirements shall apply to all officers and directors of any such corporation.

(b) No such license shall be granted to any person under twenty-one (21) years of age.

(c) No such license shall be granted to any corporation when more than fifty (50) per cent of the stock interest, legal or beneficial, is held by any person or persons not eligible for a license under this article.

(Ord. No. 181, § 7, 4-13-34; Ord. No. 864, § 5(a), (b), (i), 11-17-70; Ord. No. 16-89, § 1, 8-22-89)

**State law references:** Persons who may not be licensed, KRS 243.100.

### **Sec. 3-38. Premises for which licenses not to be issued.**

(a) No license shall be granted for any premises that is located within a residential district except that a special private club license may be issued and, if so, a malt beverage license may be issued to the same licensee holding a special private club license for the same premises. Any premises shall be deemed to be included within a residence district if two-thirds ( 2/3) of the buildings within a radius of five hundred (500) feet are used exclusively for residence purposes or the uses incidental thereto, regardless of the zoning classification of the property.

(b) No license shall be granted any applicant if he/she owns the premises at which the business is to be located and those premises have delinquent property taxes. No license shall be granted for any business operation which has delinquent payroll taxes until such taxes are paid. No license shall be granted to any applicant who has delinquent property taxes or delinquent payroll taxes for another business located within the city.

(c) No license shall be issued unless the premises to be licensed conform to the sanitary, safety and health requirements of the city and the rules and regulations of the state board of health applicable to restaurants.

(d) No license shall be granted nor shall any application be accepted for any premises unless there is an established business operating upon the premises or the premises is at the time of the application ready to commence business.

(Ord. No. 181, § 7, 4-13-34; Ord. No. 864, § 5(c), (d), (f), (g), 11-17-70; Ord. No. 869, §§ 1, 2, 12-29-70; Ord. No. 30-90, § 1, 8-28-90; Ord. No. 14-94, § 1, 5-17-94; Ord. No. 7-98, § 1, 5-19-98; Ord. No. 11-2001, § 1, 8-7-01)

**State law references:** Premises that may not be licensed for sales at retail, KRS 243.220; premises for which retail package and drink licenses may not be issued, KRS 243.230.

### **Sec. 3-39. Conspicuous posting required.**

Every license and permit issued pursuant to this article shall be posted while in force in a conspicuous place in the room or place where intoxicating liquors are kept for sale.

(Ord. No. 181, § 8, 4-13-34; Ord. No. 864, § 6, 11-17-70)

**State law references:** Posting of licenses, KRS 243.620.

### **Sec. 3-40. Duplicates.**

Whenever a license or permit shall be lost or destroyed without fault on the part of the holder or his agent or employee, a duplicate in lieu thereof under the original application shall be issued by the



city clerk on satisfying himself as to the facts, upon the payment of a renewal fee of ten dollars (\$10.00).

(Ord. No. 181, § 8, 4-13-34; Ord. No. 864, § 6, 11-17-70)

**State law references:** Lost or destroyed license, KRS 243.620(3).

### **Sec. 3-41. Conditions to which license subject.**

All licenses granted hereunder shall be granted subject to the following conditions as well as any other conditions of this article, and subject to all other statutes or regulations of the city or commonwealth applicable thereto:

(1) Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the city or commonwealth at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of city ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.

(2) No person, firm or corporation holding a license under the provisions of this article shall sell any intoxicating alcoholic liquor behind blinds or screens, but such sales shall be conducted openly and without any attempt to hide it or screen it from public view.

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

(4) No gambling or game of chance of any sort shall be permitted in any form upon the licensed premises. Dice, slot machines, or any device of chance are prohibited and shall not be kept upon the premises.

(Ord. No. 181, § 9, 4-13-34; Ord. No. 864, § 7, 11-17-70)

### **Sec. 3-42. Transferability.**

No license issued under provisions of this article shall be transferable either as to license or location except as provided in this article or by state law.

(Ord. No. 181, § 7(j), 4-13-34)

**State law references:** Transfer of license without authorization prohibited, KRS 243.630; transfer of license to other premises, KRS 243.650.

### **Sec. 3-43. Disposition of taxes and forfeited bonds.**

All money derived from the collection of license taxes herein provided for, and all money derived from the forfeiture of bonds herein provided for, shall be paid into and become a part of the general fund of the city.

(Ord. No. 181, § 12, 4-13-34; Ord. No. 864, § 10, 11-17-70)

### **Sec. 3-44. Penalties.**

(a) Any person commencing the operation of a business required to be licensed under

provisions of this article without first having acquired such license shall, upon conviction, be assessed the penalties provided therefor by statute, and, in all other cases, such person shall, upon conviction, be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), with each day of operation without a license to be a separate offense. Violation of any other of the provisions of this article shall, if a statutory offense, be assessed the penalty provided by statute, and, in all other cases, violators shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), and if the violation is a continuing violation each day shall constitute a separate offense.

(b) Fees for all licenses issued under this chapter shall be due and payable as set out herein and penalty of ten (10) percent of the applicable license fee is hereby imposed with respect to any license issued which is not purchased within thirty (30) days after it becomes due and payable. An additional ten (10) percent penalty is hereby imposed for each additional calendar month of delinquency of the applicable license fee.

(Ord. No. 922, § 9, 6-26-73; Ord. No. 23-2005, § 1, 10-18-05)

Secs. 3-45--3-50. Reserved.

## DIVISION 2. APPLICATION\*

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\*State law references: Applications for state licenses, KRS 243.380.

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### Sec. 3-51. To whom made; verification; information required.

Any person desiring to obtain a license to conduct any of the businesses for which a license is required under provisions of this article, whether by original issue or by transfer, shall file with the city clerk in his own handwriting a verified application containing the following information:

- (1) The name, age, social security number, residence, address and addresses for the past ten (10) years of each applicant and if there is more than one and they are partners, the partnership name and address, and the facts as to their citizenship;
- (2) The name and address of each person interested or to become interested in the business for which the license is sought, together with the nature of that interest and if the applicant is a corporation, the names, addresses and ages of each officer, director, manager and employee, the facts as to their citizenship, and the state under which laws such corporate applicant is incorporated. The city licensing board may require the names of all of the stockholders;
- (3) The premises to be licensed, stating the street and number, if the premises has a street and number, and otherwise such a description as will reasonably indicate the location of the premises. The applicant shall also state the nature of his interest in the premises, and the name, age and address of any other person, either as principal or associate, who is interested with the applicant, either in the premises or in the business to be licensed, and the facts as to his citizenship;
- (4) A statement that neither the applicant nor any other person referred to in this section has been convicted of any misdemeanor directly or indirectly attributable to the use, manufacture, sale of or traffic in alcoholic beverages, or any felony whatever, within two (2) years preceding the application, and that no license issued to him under any



alcoholic beverage statute has been revoked for cause within two (2) years prior to the date of the application; and

(5) A statement that the applicant will in good faith abide by every statute and ordinance relating to the manufacture, sale and transportation of alcoholic beverages that may be in force in the location at which he seeks to do business, as well as all regulations of the board.

(6) Proof of publication of notice of intention to apply for license in compliance with Kentucky Revised Statutes, Section 243.360.

(Ord. No. 181, § 6, 4-13-34; Ord. No. 922, § 6A, 6-22-73)

**Cross references:** City licensing board, Ch. 9, Art. III.

### **Sec. 3-52. Clerk to assist illiterate or injured applicant.**

If the applicant for any license authorized to be issued under this article is unable to write by reason of lack of education or injury, the city clerk may fill out the required application, after which it shall be read back to the applicant, corrections noted, and the application signed by the applicant making an "X," said type signature to be verified by the city clerk, together with a statement:

I have filled out this application upon the direction of the applicant and he has verified it in my presence.

Signed \_\_\_\_\_  
City Clerk

(Ord. No. 922, § 6B, 6-26-73)

### **Sec. 3-53. Reserved.**

**Editor's note:** Ord. No. 8-2002, § 1, adopted April 16, 2002, repealed former section 3-53 in its entirety which pertained to a deposit and bond requirement for applications under this article and derived from Ord. No. 181, § 6, 4-13-34; Ord. No. 922, § 6C, 6-22-73; Ord. No. 22-84, § 1, 9-25-84; Ord. No. 5-94, § 1, 3-15-94.

### **Sec. 3-54. Advertising; protest; docketing for hearing.**

(a) After an application has been filed in compliance with the requirements of this division, the applicant applying for a license shall advertise by publication in a newspaper as defined in KRS 424.110 for two (2) days. The notice shall conform in all material respects to the following requirements:

(1) The notice shall state: The name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;

(2) The notice shall specifically state the location of the premises for which the license is sought and the type of license(s) being requested; and

(3) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing to the City Clerk within ten (10) days of the last date

of legal publication."

(b) Any protest received after the ten (10) day period has expired shall not be considered a valid legal protest by the board.

(c) The application shall then be docketed for hearing at the next regular meeting of the city licensing board held after the time for filing protests has expired, and for this purpose the city clerk shall keep a separate book noting thereon the time the application was filed, the time any notice required herein was sent or mailed and the results thereof, and the city clerk shall, in writing advise the chairman of the board of the status of each application at least twenty-four (24) hours prior to its regular meeting date.

(Ord. No. 922, § 6D, 6-26-73; Ord. No. 8-2002, § I, 4-16-02)

Secs. 3-55--3-60. Reserved.

### **DIVISION 3. ISSUANCE, DENIAL AND RENEWAL**

#### **Sec. 3-61. Action of city licensing board on application for license; clerk to issue approved licenses.**

(a) *When no protest filed.* If no protest is filed as prescribed by section 3-54, and the city licensing board finds that the application is in due form, and that the applicant is a desirable licensee, the board shall grant the license applied for at its next regular meeting without a formal hearing, and the city clerk shall, subject to section 3-31 hereof, thereupon issue said license or licenses. If the board finds that the applicant is not desirable, it shall deny the license.

(b) *When protest filed.* If one or more written protests are filed, then the city licensing board shall set the matter down for public hearing and shall give due notice of the time and place thereof to the applicant, any protestants of record, and the alcoholic beverage control administrator, by mail, and to the public by publishing notice of said hearing one time in The Winchester Sun at the expense of the applicant, at which time the board shall proceed to hear any evidence relating to the factors to be considered under section 3-54 of this article.

(Ord. No. 922, § 6, 6-26-73; Ord. No. 22-84, § II, 9-25-84)

#### **Sec. 3-62. Reliance by board upon information provided; presumption of correctness; materiality.**

In giving any notice, or taking any action in reference to a license, the city licensing board may rely upon the information furnished in the application or in the supplemental statement connected with the application. Such information as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application, or supplemental notice of change under section 3.63, shall be deemed material in any prosecution for perjury.

(Ord. No. 922, § 6, 6-26-73)

#### **Sec. 3-63. Report of changes in fact after license issued.**

If, after a license has been issued, there is a change in any of the facts required in the application for license, the licensee shall notify the city licensing board in writing of such change within ten (10) days after knowledge thereof.



(Ord. No. 922, § 6, 6-26-73)

### **Sec. 3-64. Renewal of licenses; action by board on transfer or failure to renew.**

Licenses issued under provisions of this article may be renewed annually without further action of the city licensing board until revoked; provided, however, that action by the board as provided in section 3-61 shall be required for proposed transfer of a license or when the licensee has failed to renew his license.

(Ord. No. 922, § 6, 6-26-73)

### **Sec. 3-65. Appeals from board action.**

(a) Within a period of ten (10) days after the hearing, the licensee, or the applicant, as the case may be, or any aggrieved protestant of record may appeal the findings of the city licensing board by filing with the city clerk a copy of the order of the board with a formal statement setting out the portions of the order with which he disagrees. The city clerk shall thereupon note on the order the time and date of the filing, and shall promptly notify the mayor or, in his absence, the vice-mayor, in writing, stating the substantial facts of the appeal and shall preserve the record until docketed by the full board of commissioners for hearing, and the matter shall be set down for hearing de novo by the board of commissioners.

(b) Notice of the time, place and purpose of the appeal shall be sent to the party or parties by the city clerk, in the mode and manner provided in subsection (a), at least three (3) days prior to the time set for the hearing. Pending appeal from a board action suspending or revoking a license, the ruling of the board shall be suspended.

(Ord. No. 922, § 8, 6-26-73)

Secs. 3-66--3-71. Reserved.

## **DIVISION 4. SUSPENSION OR REVOCATION\***

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\***State law references:** Causes for which licenses may be revoked, KRS § 243.490; causes for which licenses must be revoked or suspended, KRS § 243.500.

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### **Sec. 3-72. Grounds for revocation generally.**

A violation of this article by any agent or employee of a licensee or permit holder shall constitute a violation by the licensee or permit holder, and whenever the holder of any license or permit under this article shall violate any portion of the article or any regulation adopted pursuant thereto, the city clerk may be instructed to cancel or revoke such license.

(Ord. No. 181, § 10, 4-13-34; Ord. No. 864, § 8, 11-17-70)

### **Sec. 3-73. Acts authorizing suspension or revocation enumerated; declared public**

**nuisance.**

(a) Any license issued under provisions of this article may be suspended or revoked when the licensee, or any of his agents, clerks, servants or employees either by permission or in disobedience of the licensee's instruction:

- (1) Has made a false material statement in an application for this or any other license;
- (2) Has been formally charged with a violation of the provisions of any Kentucky statute or any city ordinance, including this article, relating to the operation of said licensed business or relating to the operation of any other business on the premises;
- (3) Has been formally charged with selling any illegal beverages on the licensed premises or elsewhere;
- (4) Has been formally charged with any violation of law relating to the regulation of the manufacture, sale and transportation of alcoholic beverages;
- (5) Has been formally charged with a violation of any act of congress or any rules or regulations of any federal board, agency or commission relating to the regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or any rules and regulations of any local alcoholic beverage authority or any similar body heretofore in existence;
- (6) Has committed any act or omission for which any such license may be revoked by the state alcoholic beverage control board, in the exercise of its sound discretion;
- (7) Has committed any act or omission which would constitute reason for which the alcoholic beverage control administrator would have been required to refuse a license had the facts been known;
- (8) Has failed to pay any occupational license fee levied by the city upon any business operated by the licensee, or has failed to obtain a city license where required;
- (9) Has set up, conducted, operated or kept on the licensed premises, any gambling game, gambling device, gambling machine, gambling contrivance, lottery, gift enterprise, handbook or facility for betting or transmitting bets on horse races and athletic events;
- (10) Has permitted known gamblers, prostitutes, persons of immoral character, or juveniles to congregate on the licensed premises;
- (11) Has failed to secure or maintain proper certificates from the board of health when required to do so by any provisions of this Code or other city ordinance, statute or administrative regulations;
- (12) Has given, sold, loaned or otherwise transferred or attempted to transfer said license to another without proceeding in the manner required by law;
- (13) Has failed to keep any distilled spirits or wine or malt beverages for consumption on the premises in a locked room or locked container upon premises in which business is being conducted during hours or at times other than the hours or times during which such distilled spirits or wine or malt beverages for consumption on the premises may be sold pursuant to Kentucky statutes or ordinance of the City of Winchester, Kentucky.

(b) Each of the acts enumerated in subsection (a) as causes for suspension or revocation is hereby declared to constitute a public nuisance.

(Ord. No. 922, § 7A, 6-26-73; Ord. No. 9-97, § 1, 3-4-97)

**Cross references:** Nuisances, Ch. 11, Art. II.



**Sec. 3-74. Procedure.**

(a) When any person shall file with the city clerk a verified charge that a licensee has committed one or more of the acts enumerated in section 3-73(a) the matter shall be docketed for hearing at the next regular meeting of the city licensing board at which time it shall proceed to hear the charges. The charges shall be in writing, shall be signed and verified and shall set out clearly the charges made, and the licensee in question shall be served with a copy of such charges by the city clerk and a statement of the day, place and hour of hearing at least three (3) days prior to the hearing. It shall be sufficient to prove service by a written statement from the city clerk that a copy of the charges and notice of hearing were placed in the United States mail with proper and sufficient postage stamps, affixed thereon, addressed to the last known address of the licensee or applicant, as the case may be. The clerk may personally serve any notice required herein and make a due return on a copy of said notice.

(b) If any two (2) members of the city licensing board are of the opinion that probable cause exists for revocation of a license issued under provisions of this article, the board may immediately suspend such license pending hearing, by filing an order to that effect with the city clerk, who shall at once cause a copy of said order to be served upon the licensee in the manner and form set out in subsection (a). Such hearing shall be held within three (3) days after the date of suspension of the license.

(Ord. No. 922, § 7B, 6-26-73)

**State law references:** Institution of revocation proceedings by state administrator, KRS 243.520; conduct of hearing by state board, KRS 243.550.

**Sec. 3-75. Effect of revocation.**

Any licensee whose license has been revoked in the manner provided in this article shall not be eligible to obtain any city alcoholic beverage license for a period of two (2) years thereafter.

(Ord. No. 181, § 7(f), 4-13-34; Ord. No. 864, § 5(c), 11-17-70; Ord. No. 922, § 7C, 6-26-73)

**State law references:** Effect of revocation on eligibility for license, KRS 243.100(5).

Secs. 3-76--3-90. Reserved.

# CITY OF WINCHESTER ALCOHOL BEVERAGE ORDINANCE

## ARTICLE I. GENERAL ALCOHOLIC BEVERAGE REGULATIONS

### Sec. 3-1. Licensed premises to be closed during specified times; exception.

It shall be unlawful for any premises within the city for which there has been granted a license for the sale of distilled spirits, malt beverages or wine at retail to remain open for any purpose as hereafter stated:

- (1) The provision of the State Alcoholic Beverage Control laws contained in KRS Chapter 244.290(1) is hereby adopted as part of the alcoholic beverage regulations of the city;
- (2) As to a licensee for the sale of distilled spirits or wine, between midnight and 8:00 a.m. or at any time during the twenty-four (24) hours of Sunday except that the premises may remain open until 1:00 a.m. Saturday and 1:00 a.m. Sunday;
- (3) As to a licensee for the sale of malt beverages, between midnight and 6:00 a.m. or at any time during the twenty-four (24) hours of Sunday except that the premises may remain open until 1:00 a.m. Saturday and 1:00 a.m. Sunday;
- (4) Provided, however, that if a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stock of distilled spirits, malt beverages and/or wine, and all fixtures and apparatus connected with his business as a licensee, and such separate department is kept locked during the times for which closure is required above, the licensee shall be deemed to have complied with this section. This provision does not apply to retail sale of malt beverages in package form.
- (5) Provided, further, however that a distilled spirits and/or wine retail drink licensee and/or licensee for the sale at retail of malt beverages for consumption on the premises may keep the licensed premises open until 1:00 a.m. on New Year's Day except when New Year's Day is on Monday.

(Ord. No. 268, § 1, 8-25-44; Ord. No. 601, § 1, 5-8-57; Ord. No. 606, §§ 1, 2, 10-1-57; Ord. No. 17-82, § 1, 8-3-82; Ord. No. 8-94, § 1, 5-3-94; Ord. No. 10-97, § 1, 3-4-97; Ord. No. 16-2001, § 1, 10-2-01)

### Sec. 3-2. Trafficking prohibited when establishments closed.

It shall be unlawful for any licensee to sell, lend, deliver or give away distilled spirits or wine during the hours licensed premises are required to be closed as provided in section 3-1.

(Ord. No. 606, § 3, 10-1-57)

### Sec. 3-3. Penalties for violation of chapter.

Except as may be otherwise specifically provided in this chapter, any person who shall violate any provision of this chapter shall, upon conviction, be punished by a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or imprisoned for not more than six (6) months, or both, and in addition thereto his license shall be revoked.  
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 for not more than six (6) months, or both. If the offender is a corporation, joint stock company, association or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

(Ord. No. 181, § 11, 4-13-34; Ord. No. 608, § 4, 10-1-57)

Secs. 3-4--3-15. Reserved.

## **ARTICLE II. ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR\***

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**\*State law references:** Office of city alcoholic beverage control administrator, KRS § 241.160 et seq.

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### **Sec. 3-16. Office created.**

There is hereby created the office of city alcoholic beverage control administrator hereinafter "administrator," who shall be the chief of the Winchester Police Department. The administrator may be a member of the city licensing board in the discretion of the appointing authority.

(Ord. No. 357, §§ I, II, 6-14-48; Ord. No. 476, §§ 1, 2, 5-20-52; Ord. No. 922, § 3, 6-26-73; Ord. No. 20-2002, § I, 9-17-02)

### **Sec. 3-17. Functions.**

The functions of the administrator shall be the same, with respect to city licenses and regulations, as the functions of the state alcoholic beverage control board with respect to state licenses and regulations, except that no regulation adopted by the administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the state alcoholic beverage control board. No regulation of the administrator shall become effective until it has been approved by the state alcoholic beverage control board.

(Ord. No. 922, § 4, 6-26-73)

**State law references:** Similar provisions, KRS 241.190.

### **Sec. 3-18. Reserved.**

**Editor's note:** Ord. No. 20-2002, § I, adopted Sept. 17, 2002, repealed former section 3-18 in its entirety which pertained to the compensation of city alcoholic beverage control administrator and derived from Ord. No. 357, § II, 6-14-48; Ord. No. 476, § 3, 5-20-52; Ord. No. 922, § 2, 6-26-73; Ord. No. 7-80, § 1, 2-12-80.

**Cross references:** Compensation of members of licensing board, § 9-42.

Secs. 3-19--3-29. Reserved.

## **ARTICLE III. ALCOHOLIC BEVERAGE LICENSES\***

**\*Cross references:** City licensing board, Ch. 9, Art. III.

**State law references:** License to traffic in alcoholic beverages, KRS 243.020 et seq.; city licenses, KRS 243.070 et seq.

### **DIVISION 1. GENERALLY**

#### **Sec. 3-30. License required.**

No person shall vend, sell, deal or traffic, or, for the purpose of evading any law or provision of this Code, give away any intoxicating liquor in any quantity whatever, or cause the same to be done, without having procured a license as provided in this article, nor without complying with all provisions of this article, and all statutes, ordinances and regulations applicable thereto.

(Ord. No. 181, § 2, 4-13-34)

#### **Sec. 3-31. State license prerequisite to city license.**

No license provided for in this article shall be granted, issued or sold to any person until such person shall have obtained from the state administrator a license as provided by state law.

(Ord. No. 181, § 4, 4-13-34)

#### **Sec. 3-32. Local approval required before application for state license.**

Any person intending to make application for a license for a premises within the city, or for the transfer of any existing liquor by the drink license, shall first make an application with and obtain the approval of the local licensing board as hereinafter provided before making application with the state alcoholic beverage control board.

(Ord. No. 864, § 3, 11-17-90)

**State law references:** Local administrator to approve application first, KRS 243.370.

#### **Sec. 3-33. Types of beverage licenses.**

There are hereby created the following types of alcoholic or malt beverage licenses:

*Malt beverage license.* A malt beverage license shall authorize the sale at retail of malt beverages in package form or for consumption on the premises in accordance with the Kentucky Revised Statutes.

*Retail package license.* A distilled spirits and wine retail package license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wine at retail in unbroken



packages only, and only for consumption off the licensed premises in accordance with the Kentucky Revised Statutes.

*Retail drink license.* A distilled spirits and wine retail drink license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises in accordance with the requirements of the Kentucky Revised Statutes. A retail drink license shall not authorize the sale of distilled spirits or wine by the package.

*Restaurant wine license.* A restaurant wine license shall authorize sale of wines for consumption on the premises by restaurants meeting the requirements set out in the Kentucky Revised Statutes.

*Special private club license.* A special private club license may be issued to any 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. This license shall authorize the licensee to exercise the privilege of a distilled spirits and wine retail drink license at the designated premises if the general public is excluded. All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee shall apply to a special private club licensee.

*Caterer's license.* A caterer's license shall authorize the licensee to purchase and store alcoholic beverages, transport, sell, serve and deliver alcoholic beverages by the drink, receive and fill orders for alcoholic beverages and receive payment for alcoholic beverages served at a function on a by-the-drink or by-the-function basis in accordance with the Kentucky Revised Statutes. A city caterer's license is required when the premises serving as the caterer's commissary is located in the City of Winchester, Kentucky or when the location at which alcoholic beverages are sold, served or delivered by a caterer is in the city.

*Malt beverage distributor's license.* A distributor's license shall authorize the licensee to conduct the business authorized for such a license by the Kentucky Revised Statutes.

The fees for these licenses shall be as follows:

Malt Beverage License:

Per year . . . \$200.00

Per month or part of month . . . 12.50

Retail package license . . . 750.00

Retail drink license:

Per year . . . 800.00

Per month or part of month . . . 66.67

Restaurant wine license . . . 300.00

Special private club license . . . 300.00

Caterer's license . . . 600.00

Malt beverage distributor's license . . . 200.00

(Ord. No. 922, § 5, 6-26-73; Ord. No. 7-79, § 1, 6-26-79; Ord. No. 12-94, § 1, 5-17-94)

**State law references:** Restaurant wine license, KRS 243.032; function of alcoholic beverage control board over licenses, KRS 241.060 (2).

### **Sec. 3-34. Quotas.**

Quotas for the various licenses authorized by this article shall be those from time to time fixed by regulations of the state alcoholic beverage control board adopted pursuant to KRS section 241.060.

(Ord. No. 864, § 1, 11-17-70; Ord. No. 922, § 5, 6-26-73; Ord. No. 17-82, § II, 8-3-82)

### **Sec. 3-35. Fees.**

Fees for any license issued under provisions of this article shall be in such amounts and under such conditions as the board of commissioners shall from time to time ordain or otherwise lawfully establish, subject to restrictions provided by state law.

**Cross references:** Liquor by the drink license tax, § 9-57.

**State law references:** City licenses; fees, KRS 243.070.

### **Sec. 3-36. License period; prorating and abatement of fees.**

All licenses issued pursuant to this article shall expire on dates as set forth in KRS 243.090(1) of the provision of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky and all amendments and supplements thereto, are adopted as far as applicable as a portion of this subchapter except as otherwise lawfully provided herein. When any person applies for a license after the established expiration dates per KRS 243.090(1) shall be charged, if the license is issued, an amount equal to as many twelfths of the annual license fees as there are calendar months, including the month in which the license is granted, until the expiration dates as established by KRS 243.090(1). No abatement of license fee shall be permitted to any person who held a license pursuant to this article for the same premises in the preceding license period and who was actually doing business under the license during the last month of the proceeding license period. A copy of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky is on file in the office of the city clerk for the City of Winchester and is hereby adopted by reference and made a part hereof as though copied at length herein.

(Ord. No. 864, § 2, 11-17-70; Ord. No. 14-2001, § I, 8-21-01)

**State law references:** Date licenses expire, reduction in fee for licenses less than year, KRS 243.090.

### **Sec. 3-37. Persons who may not be licensed.**

- (a) No license shall be granted under this article to any person not of good moral character and a full citizen of the United States and of Kentucky; nor shall any license be issued to any person who has habitually been a petty law offender, or has been convicted of an offense against the laws of the state punishable by imprisonment in the state prison, unless the person so committed has been duly pardoned. The provisions of this section shall not apply to a corporation authorized to do business in Kentucky, but such



provisions except the residence requirements shall apply to all officers and directors of any such corporation.

- (b) No such license shall be granted to any person under twenty-one (21) years of age.
- (c) No such license shall be granted to any corporation when more than fifty (50) per cent of the stock interest, legal or beneficial, is held by any person or persons not eligible for a license under this article.

(Ord. No. 181, § 7, 4-13-34; Ord. No. 864, § 5(a), (b), (i), 11-17-70; Ord. No. 16-89, § 1, 8-22-89)

**State law references:** Persons who may not be licensed, KRS 243.100.

### **Sec. 3-38. Premises for which licenses not to be issued.**

- (a) No license shall be granted for any premises that is located within a residential district except that a special private club license may be issued and, if so, a malt beverage license may be issued to the same licensee holding a special private club license for the same premises. Any premises shall be deemed to be included within a residence district if two-thirds ( 2/3) of the buildings within a radius of five hundred (500) feet are used exclusively for residence purposes or the uses incidental thereto, regardless of the zoning classification of the property.
- (b) No license shall be granted any applicant if he/she owns the premises at which the business is to be located and those premises have delinquent property taxes. No license shall be granted for any business operation which has delinquent payroll taxes until such taxes are paid. No license shall be granted to any applicant who has delinquent property taxes or delinquent payroll taxes for another business located within the city.
- (c) No license shall be issued unless the premises to be licensed conform to the sanitary, safety and health requirements of the city and the rules and regulations of the state board of health applicable to restaurants.
- (d) No license shall be granted nor shall any application be accepted for any premises unless there is an established business operating upon the premises or the premises is at the time of the application ready to commence business.

(Ord. No. 181, § 7, 4-13-34; Ord. No. 864, § 5(c), (d), (f), (g), 11-17-70; Ord. No. 869, §§ 1, 2, 12-29-70; Ord. No. 30-90, § 1, 8-28-90; Ord. No. 14-94, § 1, 5-17-94; Ord. No. 7-98, § 1, 5-19-98; Ord. No. 11-2001, § 1, 8-7-01)

**State law references:** Premises that may not be licensed for sales at retail, KRS 243.220; premises for which retail package and drink licenses may not be issued, KRS 243.230.

### **Sec. 3-39. Conspicuous posting required.**

Every license and permit issued pursuant to this article shall be posted while in force in a conspicuous place in the room or place where intoxicating liquors are kept for sale.

(Ord. No. 181, § 8, 4-13-34; Ord. No. 864, § 6, 11-17-70)

**State law references:** Posting of licenses, KRS 243.620.

### **Sec. 3-40. Duplicates.**

Whenever a license or permit shall be lost or destroyed without fault on the part of the holder or his agent or employee, a duplicate in lieu thereof under the original application shall be issued by the city clerk on satisfying himself as to the facts, upon the payment of a renewal fee of ten dollars (\$10.00).

(Ord. No. 181, § 8, 4-13-34; Ord. No. 864, § 6, 11-17-70)

**State law references:** Lost or destroyed license, KRS 243.620(3).

### **Sec. 3-41. Conditions to which license subject.**

All licenses granted hereunder shall be granted subject to the following conditions as well as any other conditions of this article, and subject to all other statutes or regulations of the city or commonwealth applicable thereto:

- (1) Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the city or commonwealth at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of city ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- (2) No person, firm or corporation holding a license under the provisions of this article shall sell any intoxicating alcoholic liquor behind blinds or screens, but such sales shall be conducted openly and without any attempt to hide it or screen it from public view.
- (3) Each licensed premises shall at all times be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- (4) No gambling or game of chance of any sort shall be permitted in any form upon the licensed premises. Dice, slot machines, or any device of chance are prohibited and shall not be kept upon the premises.

(Ord. No. 181, § 9, 4-13-34; Ord. No. 864, § 7, 11-17-70)

### **Sec. 3-42. Transferability.**

No license issued under provisions of this article shall be transferable either as to license or location except as provided in this article or by state law.

(Ord. No. 181, § 7(j), 4-13-34)

**State law references:** Transfer of license without authorization prohibited, KRS 243.630; transfer of license to other premises, KRS 243.650.

### **Sec. 3-43. Disposition of taxes and forfeited bonds.**

All money derived from the collection of license taxes herein provided for, and all money



derived from the forfeiture of bonds herein provided for, shall be paid into and become a part of the general fund of the city.

(Ord. No. 181, § 12, 4-13-34; Ord. No. 864, § 10, 11-17-70)

### **Sec. 3-44. Penalties.**

Any person commencing the operation of a business required to be licensed under provisions of this article without first having acquired such license shall, upon conviction, be assessed the penalties provided therefor by statute, and, in all other cases, such person shall, upon conviction, be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), with each day of operation without a license to be a separate offense. Violation of any other of the provisions of this article shall, if a statutory offense, be assessed the penalty provided by statute, and, in all other cases, violators shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), and if the violation is a continuing violation each day shall constitute a separate offense.

(Ord. No. 922, § 9, 6-26-73)

Secs. 3-45--3-50. Reserved.

## **DIVISION 2. APPLICATION\***

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\*State law references: Applications for state licenses, KRS 243.380.

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### **Sec. 3-51. To whom made; verification; information required.**

Any person desiring to obtain a license to conduct any of the businesses for which a license is required under provisions of this article, whether by original issue or by transfer, shall file with the city clerk in his own handwriting a verified application containing the following information:

- (1) The name, age, social security number, residence, address and addresses for the past ten (10) years of each applicant and if there is more than one and they are partners, the partnership name and address, and the facts as to their citizenship;
- (2) The name and address of each person interested or to become interested in the business for which the license is sought, together with the nature of that interest and if the applicant is a corporation, the names, addresses and ages of each officer, director, manager and employee, the facts as to their citizenship, and the state under which laws such corporate applicant is incorporated. The city licensing board may require the names of all of the stockholders;
- (3) The premises to be licensed, stating the street and number, if the premises has a street and number, and otherwise such a description as will reasonably indicate the location of the premises. The applicant shall also state the nature of his interest in the premises, and the name, age and address of any other person,

either as principal or associate, who is interested with the applicant, either in the premises or in the business to be licensed, and the facts as to his citizenship;

- (4) A statement that neither the applicant nor any other person referred to in this section has been convicted of any misdemeanor directly or indirectly attributable to the use, manufacture, sale of or traffic in alcoholic beverages, or any felony whatever, within two (2) years preceding the application, and that no license issued to him under any alcoholic beverage statute has been revoked for cause within two (2) years prior to the date of the application; and
- (5) A statement that the applicant will in good faith abide by every statute and ordinance relating to the manufacture, sale and transportation of alcoholic beverages that may be in force in the location at which he seeks to do business, as well as all regulations of the board.
- (6) Proof of publication of notice of intention to apply for license in compliance with Kentucky Revised Statutes, Section 243.360.

(Ord. No. 181, § 6, 4-13-34; Ord. No. 922, § 6A, 6-22-73)

**Cross references:** City licensing board, Ch. 9, Art. III.

#### **Sec. 3-52. Clerk to assist illiterate or injured applicant.**

If the applicant for any license authorized to be issued under this article is unable to write by reason of lack of education or injury, the city clerk may fill out the required application, after which it shall be read back to the applicant, corrections noted, and the application signed by the applicant making an "X," said type signature to be verified by the city clerk, together with a statement:

I have filled out this application upon the direction of the applicant and he has verified it in my presence.

Signed \_\_\_\_\_  
City Clerk

(Ord. No. 922, § 6B, 6-26-73)

#### **Sec. 3-53. Reserved.**

**Editor's note:** Ord. No. 8-2002, § 1, adopted April 16, 2002, repealed former section 3-53 in its entirety which pertained to a deposit and bond requirement for applications under this article and derived from Ord. No. 181, § 6, 4-13-34; Ord. No. 922, § 6C, 6-22-73; Ord. No. 22-84, § 1, 9-25-84; Ord. No. 5-94, § 1, 3-15-94.

#### **Sec. 3-54. Advertising; protest; docketing for hearing.**

- (a) After an application has been filed in compliance with the requirements of this division, the applicant applying for a license shall advertise by publication in a newspaper as defined in KRS 424.110 for two (2) days. The notice shall conform in all material respects to the following requirements:



- (1) The notice shall state: The name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;
  - (2) The notice shall specifically state the location of the premises for which the license is sought and the type of license(s) being requested; and
  - (3) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing to the City Clerk within ten (10) days of the last date of legal publication."
- (b) Any protest received after the ten (10) day period has expired shall not be considered a valid legal protest by the board.
- (c) The application shall then be docketed for hearing at the next regular meeting of the city licensing board held after the time for filing protests has expired, and for this purpose the city clerk shall keep a separate book noting thereon the time the application was filed, the time any notice required herein was sent or mailed and the results thereof, and the city clerk shall, in writing advise the chairman of the board of the status of each application at least twenty-four (24) hours prior to its regular meeting date.

(Ord. No. 922, § 6D, 6-26-73; Ord. No. 8-2002, § 1, 4-16-02)

Secs. 3-55--3-60. Reserved.

### **DIVISION 3. ISSUANCE, DENIAL AND RENEWAL**

#### **Sec. 3-61. Action of city licensing board on application for license; clerk to issue approved licenses.**

- (a) *When no protest filed.* If no protest is filed as prescribed by section 3-54, and the city licensing board finds that the application is in due form, and that the applicant is a desirable licensee, the board shall grant the license applied for at its next regular meeting without a formal hearing, and the city clerk shall, subject to section 3-31 hereof, thereupon issue said license or licenses. If the board finds that the applicant is not desirable, it shall deny the license.
- (b) *When protest filed.* If one or more written protests are filed, then the city licensing board shall set the matter down for public hearing and shall give due notice of the time and place thereof to the applicant, any protestants of record, and the alcoholic beverage control administrator, by mail, and to the public by publishing notice of said hearing one time in *The Winchester Sun* at the expense of the applicant, at which time the board shall proceed to hear any evidence relating to the factors to be considered under section 3-54 of this article.

(Ord. No. 922, § 6, 6-26-73; Ord. No. 22-84, § II, 9-25-84)

**Sec. 3-62. Reliance by board upon information provided; presumption of correctness; materiality.**

In giving any notice, or taking any action in reference to a license, the city licensing board may rely upon the information furnished in the application or in the supplemental statement connected with the application. Such information as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application, or supplemental notice of change under section 3.63, shall be deemed material in any prosecution for perjury.

(Ord. No. 922, § 6, 6-26-73)

**Sec. 3-63. Report of changes in fact after license issued.**

If, after a license has been issued, there is a change in any of the facts required in the application for license, the licensee shall notify the city licensing board in writing of such change within ten (10) days after knowledge thereof.

(Ord. No. 922, § 6, 6-26-73)

**Sec. 3-64. Renewal of licenses; action by board on transfer or failure to renew.**

Licenses issued under provisions of this article may be renewed annually without further action of the city licensing board until revoked; provided, however, that action by the board as provided in section 3-61 shall be required for proposed transfer of a license or when the licensee has failed to renew his license.

(Ord. No. 922, § 6, 6-26-73)

**Sec. 3-65. Appeals from board action.**

- (a) Within a period of ten (10) days after the hearing, the licensee, or the applicant, as the case may be, or any aggrieved protestant of record may appeal the findings of the city licensing board by filing with the city clerk a copy of the order of the board with a formal statement setting out the portions of the order with which he disagrees. The city clerk shall thereupon note on the order the time and date of the filing, and shall promptly notify the mayor or, in his absence, the vice-mayor, in writing, stating the substantial facts of the appeal and shall preserve the record until docketed by the full board of commissioners for hearing, and the matter shall be set down for hearing de novo by the board of commissioners.
- (b) Notice of the time, place and purpose of the appeal shall be sent to the party or parties by the city clerk, in the mode and manner provided in subsection (a), at least three (3) days prior to the time set for the hearing. Pending appeal from a board action suspending or revoking a license, the ruling of the board shall be suspended.

(Ord. No. 922, § 8, 6-26-73)

Secs. 3-66--3-71. Reserved.



## **DIVISION 4. SUSPENSION OR REVOCATION\***

**\*State law references:** Causes for which licenses may be revoked, KRS § 243.490; causes for which licenses must be revoked or suspended, KRS § 243.500.

### **Sec. 3-72. Grounds for revocation generally.**

A violation of this article by any agent or employee of a licensee or permit holder shall constitute a violation by the licensee or permit holder, and whenever the holder of any license or permit under this article shall violate any portion of the article or any regulation adopted pursuant thereto, the city clerk may be instructed to cancel or revoke such license.

(Ord. No. 181, § 10, 4-13-34; Ord. No. 864, § 8, 11-17-70)

### **Sec. 3-73. Acts authorizing suspension or revocation enumerated; declared public nuisance.**

- (a) Any license issued under provisions of this article may be suspended or revoked when the licensee, or any of his agents, clerks, servants or employees either by permission or in disobedience of the licensee's instruction:
- (1) Has made a false material statement in an application for this or any other license;
  - (2) Has been formally charged with a violation of the provisions of any Kentucky statute or any city ordinance, including this article, relating to the operation of said licensed business or relating to the operation of any other business on the premises;
  - (3) Has been formally charged with selling any illegal beverages on the licensed premises or elsewhere;
  - (4) Has been formally charged with any violation of law relating to the regulation of the manufacture, sale and transportation of alcoholic beverages;
  - (5) Has been formally charged with a violation of any act of congress or any rules or regulations of any federal board, agency or commission relating to the regulation of the manufacture, sale and transportation or taxation of alcoholic beverages or any rules and regulations of any local alcoholic beverage authority or any similar body heretofore in existence;
  - (6) Has committed any act or omission for which any such license may be revoked by the state alcoholic beverage control board, in the exercise of its sound discretion;
  - (7) Has committed any act or omission which would constitute reason for which the alcoholic beverage control administrator would have been required to refuse a license had the facts been known;

- (8) Has failed to pay any occupational license fee levied by the city upon any business operated by the licensee, or has failed to obtain a city license where required;
  - (9) Has set up, conducted, operated or kept on the licensed premises, any gambling game, gambling device, gambling machine, gambling contrivance, lottery, gift enterprise, handbook or facility for betting or transmitting bets on horse races and athletic events;
  - (10) Has permitted known gamblers, prostitutes, persons of immoral character, or juveniles to congregate on the licensed premises;
  - (11) Has failed to secure or maintain proper certificates from the board of health when required to do so by any provisions of this Code or other city ordinance, statute or administrative regulations;
  - (12) Has given, sold, loaned or otherwise transferred or attempted to transfer said license to another without proceeding in the manner required by law;
  - (13) Has failed to keep any distilled spirits or wine or malt beverages for consumption on the premises in a locked room or locked container upon premises in which business is being conducted during hours or at times other than the hours or times during which such distilled spirits or wine or malt beverages for consumption on the premises may be sold pursuant to Kentucky statutes or ordinance of the City of Winchester, Kentucky.
- (b) Each of the acts enumerated in subsection (a) as causes for suspension or revocation is hereby declared to constitute a public nuisance.

(Ord. No. 922, § 7A, 6-26-73; Ord. No. 9-97, § 1, 3-4-97)

**Cross references:** Nuisances, Ch. 11, Art. II.

### **Sec. 3-74. Procedure.**

- (a) When any person shall file with the city clerk a verified charge that a licensee has committed one or more of the acts enumerated in section 3-73(a) the matter shall be docketed for hearing at the next regular meeting of the city licensing board at which time it shall proceed to hear the charges. The charges shall be in writing, shall be signed and verified and shall set out clearly the charges made, and the licensee in question shall be served with a copy of such charges by the city clerk and a statement of the day, place and hour of hearing at least three (3) days prior to the hearing. It shall be sufficient to prove service by a written statement from the city clerk that a copy of the charges and notice of hearing were placed in the United States mail with proper and sufficient postage stamps, affixed thereon, addressed to the last known address of the licensee or applicant, as the case may be. The clerk may personally serve any notice required herein and make a due return on a copy of said notice.
- (b) If any two (2) members of the city licensing board are of the opinion that probable cause exists for revocation of a license issued under provisions of this article, the board may immediately suspend such license pending hearing, by filing an order to that effect with the city clerk, who shall at once cause a copy of said order to be served upon the



licensee in the manner and form set out in subsection (a). Such hearing shall be held within three (3) days after the date of suspension of the license.

(Ord. No. 922, § 7B, 6-26-73)

**State law references:** Institution of revocation proceedings by state administrator, KRS 243.520; conduct of hearing by state board, KRS 243.550.

### **Sec. 3-75. Effect of revocation.**

Any licensee whose license has been revoked in the manner provided in this article shall not be eligible to obtain any city alcoholic beverage license for a period of two (2) years thereafter.

(Ord. No. 181, § 7(f), 4-13-34; Ord. No. 864, § 5(c), 11-17-70; Ord. No. 922, § 7C, 6-26-73)

**State law references:** Effect of revocation on eligibility for license, KRS 243.100(5).

Secs. 3-76--3-90. Reserved.