

**ORDINANCE NO. 2017-**

**AN ORDINANCE OF THE CITY OF BARBOURVILLE, KENTUCKY  
AMENDING ORDINANCE 2016-2 REGULATIONS AND REQUIREMENTS FOR THE  
LICENSING AND OPERATION OF ESTABLISHMENTS FOR THE SALE OF  
ALCOHOLIC BEVERAGES WITHIN THE CITY OF BARBOURVILLE, KENTUCKY  
AND PROVIDING FOR THE ADMINISTRATION  
AND ENFORCEMENT OF THIS ORDINANCE.**

**WHEREAS** the City of Barbourville deems it necessary and appropriate to amend its existing ordinance pertaining to alcoholic beverages so as to incorporate the changes passed in House Bill 183 by the Kentucky General Assembly;

**NOW THEREFORE BE IT ORDAINED BY THE CITY OF BARBOURVILLE,  
COMMONWEALTH OF KENTUCKY THAT ORDINANCE 2016-2 IS AMENDED AS  
FOLLOWS:**

**SECTION 1:            PURPOSE.**

The purpose of this chapter is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage manufacture and sales pursuant to KRS Chapters 241-244.

**SECTION 2:            DEFINITIONS.**

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

**SECTION 3:            SCOPE.**

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

of the Commonwealth relating to violations pertaining to alcoholic beverages.

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

**SECTION 4: LICENSES.**

Under this Chapter, a license shall be issued by the City only to the owners and/or operators of those establishments which qualify for licenses applicable to the City of Barbourville pursuant to KRS Chapter 243. Whenever any person or entity seeks a license from the Department of State Alcoholic Beverages Control to manufacture or traffic in alcoholic beverages within the City pursuant to some other provision of KRS Chapter. 241 through 244, such State applicant shall apply to the City for any applicable City license for the privilege of manufacturing and/or trafficking in alcoholic beverages within the City. City license fees, whether primary or supplemental, shall be assessed in accordance with KRS 243.070 and Section 16 of this Ordinance. Regulatory license fees shall be assessed in accordance with KRS 243.075 and Section 23 of this Ordinance.

**SECTION 5: ABC ADMINISTRATOR.**

(A) The Mayor shall appoint the City ABC Administrator and any assistant ABC Administrator subject to approval of the City Council. The term City ABC Administrator as used in this ordinance shall also include any assistant ABC Administrator.

(B) The City ABC Administrator may from time to time appoint such additional personnel as is necessary to assist him or her in the administration of this chapter.

(C) The salary for the Office of City ABC Administrator, if any, together with the salaries of any other personnel assisting the City ABC Administrator, shall be fixed from time to time by the City Council.

(D) The functions of the City ABC Administrator shall be the same with respect to the City licenses and regulations as the functions of the Alcoholic Beverage Control Board of the Commonwealth (hereinafter referred to as ABC Board) with respect to state licenses and regulations;

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

(F) The City ABC Administrator or assistant ABC Administrator(s) shall have all authority as authorized under KRS Chapter 241 through 244.

(G) Should the City ABC Administrator or assistant ABC Administrator(s) at any time have probable cause to believe that any applicant, licensee, employee of a licensee or any stockholder, agent or employee of a licensed corporation, has a criminal record, he or she shall have the authority to require such person to appear in person at the City Police Department for the purpose of having his or her fingerprints taken.

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

- (I) (1) Appeals from the Orders of the City ABC Administrator or assistant ABC Administrator(s) may be taken to the State ABC Board by filing with the Board within 30 days a certified copy of the Orders of the City ABC Administrator.
- (2) Matters at issue shall be heard by the Board as upon an original proceeding.
- (3) Appeals from orders of the City ABC Administrator or assistant ABC Administrator(s) shall be governed by KRS Ch. 13B.

**SECTION 6: HOURS FOR SALE AND DELIVERY.**

(A) A licensee shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages Monday through Saturday between the hours of 6:00 a.m. and 12:00 midnight. A licensee shall be permitted to sell or dispense distilled spirits, wine and or malt beverages Sunday between the hours of 1:00 p.m. and 12:00 midnight.

(B) All delivery of alcoholic beverages in the City shall be made between the hours of 6:00 a.m. and 12:00 midnight, Monday through Saturday. No delivery shall occur on Sunday.

(C) The licensee may sell and dispense distilled spirits, wine and/or malt beverages on New Year's Eve from 6:00 a.m. until 1:00 a.m. on January 1, regardless of the day of the week on which New Year's Eve occurs; provided that, the appropriate licenses have been obtained from both the City and the State ABC Board.

(D) Special license required for Sunday sales. No licensee shall offer ~~alcoholic beverages~~ distilled spirits and wine by the drink for sale at any time between 12:00 midnight on Sunday and 12:00 midnight on Monday unless the licensee shall have obtained a special license for Sunday sales.

**SECTION 7:            CONDITIONS, PROHIBITIONS AND RESTRICTIONS.**

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

(B) (1) It shall be unlawful for any licensee licensed under this chapter to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from any law enforcement agency in the County as it is now or may hereafter be operated.

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

(C) All licensees shall be required to take precautions and implement measures reasonably necessary to discourage unlawful activity in and around the licensed premises. Accordingly, the licensee shall be responsible for maintaining security on the licensed premises including providing adequate outside lighting to permit customers to utilize the parking area and to promote the safety, health and welfare of the general public utilizing the licensed premise.

(D) It shall be unlawful for the licensee under this Chapter who sells alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize or for any other purpose: (1) in direct connection with the sale of malt beverages, or (2) except as otherwise allowed by state law.

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

(F) No licensee or agent or employee of the licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee permit any drunk or intoxicated person to remain on the licensed premises.

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

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

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

1. Enter licensed premises to buy, or have served to them, alcoholic

beverages.

2. Possess, purchase or attempt to purchase, or get another to purchase alcoholic beverages.
3. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages."

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

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

(J) The licensee shall post in a prominent place easily seen by patrons a printed sign at least 8 ½ [~~11~~] inches by 11 [~~14~~] inches in size, [~~with letters at least one inch high, supplied by the Alcoholic Beverage Control Commission, and~~] with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.

(K) No malt beverage distributor shall sell any malt beverages to any person in the City for any consideration except cash or cash equivalent paid at or before the time of delivery, except as permitted by KRS 244.040. Nor shall any retail licensee sell to a purchaser for any consideration except for cash or cash equivalent at time of purchase.

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

- (a) Has been convicted of any felony within the last two years, [~~unless allowed by KRS 244.090 (2);~~]
- (b) Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of alcoholic beverages [~~intoxicating liquors~~] within the last two years, unless allowed by KRS 244.090 (2);
- (c) Is under the age of 20 [~~18~~] years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined under statute; However, at a premise licensed solely with a non-quota retail malt beverage

package license, a person that is at least eighteen (18) years of age may be employed to sell malt beverages so long as said person is under the supervision of a person twenty (20) years of age or older.

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

(2) Violation of this subsection (L) shall, subject both employer and employee to penalties provided in this Chapter and shall be cause for revocation of license.

**SECTION 8: ENFORCEMENT; INVESTIGATION AND INSPECTION OF PREMISES.**

(A) City police officers and the City ABC Administrator or assistant ABC Administrator(s) are authorized and directed to enforce this Chapter for alleged violations.

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

**SECTION 9: MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING.**

(A) All persons employed in the selling and serving of alcoholic beverages [~~by the drink~~] shall participate in and complete the Kentucky Department of Alcoholic Beverage Server Program (S.T.A.R) or responsible beverage service training from a program approved by the Kentucky Department of Alcoholic Beverage Control.

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

(C) The manager of the licensed business [~~restaurant~~] shall be responsible for compliance with the training requirements and shall maintain for inspection by the City ABC Administrator or assistant ABC Administrator(s) a record on file on each employee that shall contain the pertinent training information.

**SECTION 10: SIGNS AND ADVERTISING.**

(A) All signage shall be in compliance with any and all requirements of the City of Barboursville Zoning Ordinance and any other applicable rules and regulations of the City.

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

(C) Any advertising by any licensee under this Chapter shall be in compliance with KRS 244.130 and regulations promulgated thereunder.

**SECTION 11: PATIO AND OUTDOOR SALES ALLOWED**

Restaurant and hotel licensees under this Ordinance are allowed to make licensed sales of alcoholic beverages on patios and other outdoor locations so long as such activities are conducted upon the licensed premises and under the exclusive possession and control of the licensee.

**SECTION 12: KEG REGISTRATION**

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

(B) All retail licensees selling malt beverages in kegs for consumption off of the licensed premises shall display a numbered identification tag or other device as provided by the city to each keg at the time of sale and shall require the purchaser to complete and sign a keg registration form. At the time of such sale, the licensee shall require the purchaser to complete and sign a keg registration form for the keg stating:

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

(C) The licensee shall obtain the name, address and telephone number of the purchaser and shall require the purchaser to produce a valid driver’s license number and, if that is not available, to produce at least one other generally accepted and reliable form of identification.

(D) The licensee shall retain copies of the keg registration forms for a period of one

year and shall make the keg registration form available for inspection by state and local alcoholic beverage control officers and other law enforcement officers.

(E) The keg registration form shall be forwarded to the City ABC Administrator within five (5) working days in all situations when the keg is not returned or is returned with the control tag removed or obliterated.

(F) The City ABC Administrator is authorized to develop appropriate registration forms and to develop and to make those forms available to licensees.

(G) All licensees that sell or offer for sale kegs shall post on the licensed premises a notice provided by the City concerning the provisions of this section.

(H) It shall be unlawful for any licensee to sell or offer for sale kegs without the control labels attached and the keg registration form completed. It also shall be unlawful for any person to remove or to obliterate the control label or to fail to have the required notice visible and readily accessible from the location of the keg.

**SECTION 13:      HAPPY HOUR RESTRICTIONS. (RESERVED)**

~~Licensees shall not offer reduced drink specials (e.g. two for one, happy hours) after the hour of 10:00 p.m. until closing.~~

**SECTION 14:      NUDITY AND ADULT ENTERTAINMENT ACTIVITIES PROHIBITED.**

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

**SECTION 15:      DRIVE-THROUGH OUTLETS PROHIBITED.  
(RESERVED)**

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



**SECTION 16: FEES; APPLICATION.**

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

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

b) The applicant shall attach to the application a newspaper clipping of the advertisement and proof of the publication as provided in KRS 424.170, along with a non-refundable application fee of fifty dollars (\$50.00).

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

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

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

(b) Each application shall be accompanied by a certified or cashier's check, or a postal or express money order for all fees.

(4) All applicants shall voluntarily submit to a criminal background check and

shall sign a waiver allowing the release of this information to the City ABC Administrator or assistant ABC Administrator(s).

(5) All City license applications shall be on the form prescribed by the Kentucky Department of Alcoholic Beverage Control and shall contain:

- (a) The name and address of the licensee;
- (b) The number of the license;
- (c) The type of licenses;
- (d) A description by street and number, or otherwise, of the licensed premises;
- (e) The name and address of the owner of the building in which the licensed premises are located;
- (f) The expiration date of the license; and
- (g) A statement in substance that the license shall not be a property or vested right and that it may be revoked at any time pursuant to law.

(6) All licenses approved by the City ABC Administrator or assistant ABC Administrator(s) and issued by the City shall begin on May 1 of any year and shall expire on April 30 of the following year.

(7) The renewal by the City ABC Administrator or assistant ABC Administrator(s) of the license shall not be construed to be a waiver or acceptance of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee. The renewal application shall be accompanied by a renewal application fee of \$50.00.

(8) The yearly license term is May 1 to April 30. Any licenses issued after May 1 of any year shall be assessed a fee which is based on the pro rata portion of the remainder of the license period. However, the cost of any license shall not be less than that for a period of six months.

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

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

1. Distilled spirit license as set forth in KRS 243.030:

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

- [b] Rectifier's license,.....see below
  - 1. Class A, per annum.....\$3,000
  - 2. Class B (craft rectifier), per annum.....\$960
- [c] Wholesaler's distilled spirits & wine license, per annum ..\$3,000.00
- [d] Quota Retail package license, per annum.....\$1,000.00
- 2. Special temporary license, per event.....\$166.66
- 3. Non-quota type 1 retail drink license (includes distilled spirits, wine, and malt beverages), per annum.....\$2,000.00
- 4. Non-quota type 2 retail drink license (includes distilled spirits, wine, and malt beverages), per annum.....\$1,000.00
- 5. Non-quota type 3 retail drink license (includes distilled spirits, wine, and malt beverages), per annum.....\$ 300.00
- 6. Distilled spirits and wine special temporary auction, license, per event.....[~~\$200.00~~]\$100.00
- 7. Special Sunday retail drink license, per annum.....\$ 300.00
- 8. Extended hours supplemental license, per annum.....\$2,000.00
- 9. Caterer's license, per annum.....\$800.00
- 10. Bottling house or bottling house storage license, per annum.....\$1,000.00
- 11. Malt beverage licenses as follows:
  - [a] Brewer's license, per annum.....\$500.00
  - [b] Microbrewery license, per annum.....\$500.00
  - [c] Malt beverage distributor's license, per annum.....\$400.00
  - [d] Non-quota retail malt beverage package license, per annum \$200.00
  - [e] Non-quota type 4 retail malt beverage drink license per annum\$200.00
  - ~~[[f] Malt beverage brew on premises, per annum.....\$100.00]~~
- 12. Limited restaurant license (includes distilled spirits, wine, and malt beverages), per annum.....\$1,200.00
- 13. Limited golf course license (includes distilled spirits, wine, and malt beverages), per annum.....\$1,200.00
- 14. The fee for each of the first five (5) supplemental bar licenses shall be

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

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

16. Authorized public consumption license, per annum.....\$250.00

17. Qualified historic site license, per annum.....\$1,030.00

18. Sampling license, per annum.....\$300.00

19. Quota retail drink license, per annum.....\$1,000.00

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

**SECTION 17: REFUND OF LICENSE FEE.**

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

**SECTION 18: LOST OR DESTROYED LICENSE.**

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

**SECTION 19:            REVOCATION OR SUSPENSION AND HEARING.**

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

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

(C) Any license may be revoked or suspended for the reasons described in KRS 243.500 ~~[additional following causes]:~~

~~[(1) — Conviction of the licensee or his or her agent or employee for selling any illegal beverages on the premises licensed;]~~

~~[(2) — Making any false, material statements in an application for a license;]~~

~~[(3) — If, within a period of two consecutive years, any licensee or any of his or her clerks, servants, agents or employees of the licensee shall have been convicted of two violations of the terms and provisions of KRS Chapter 241, 243 or 244 or any act heretofore or hereafter in effect relating to the regulation of the manufacture, sale and transportation of alcoholic beverages or if within such period, any licensee or any of the clerks, servants, agents or employees of the license shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one such felony and one such misdemeanor;]~~

~~[(4) — Willful and deliberate failure or default of a licensee to pay an excise tax or any part thereof, or any penalties imposed by or under the provisions of any statutes, this chapter or acts of congress relative to taxation, or for a~~

~~violation of any rules or regulations of the Department of Revenue made in pursuance thereof; and/or}~~

~~{(5) — Setting up, conducting, operating or keeping, on the licensed premises, any gambling game, device, machine or contrivance, or lottery or gift enterprise, or handbook or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept or engaged in, on the licensed premises, any such game, device, machine, contrivance, lottery, gift enterprise, handbook or facility.}~~

~~{(6) — Failure to pay when due any tax imposed by the City of Barbourville.}~~

(D) In the event a citation for violation of any provision of this ordinance is issued, notification of the alleged violation shall be served in writing on the licensee by delivering a copy to the licensee's place of business in City of Barbourville and by mailing a copy by U. S. Mail, postage prepaid, to the licensee's address as shown on the application for a license, giving notice that licensee may, within seven (7) days of the date of the notification, request an administrative hearing before the City ABC Administrator or Assistant ABC Administrator to determine the existence of a violation. The hearing shall be a trial type hearing with all parties having a right to counsel and all witnesses subject to cross-examination.

After the hearing is concluded within thirty (30) business days, the City ABC Administrator shall issue a findings of fact and decision.

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

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

- |    |   |                    |
|----|---|--------------------|
| 1) | Distillers, rectifiers, wineries, and brewers   | \$1,000.00 per day |
| 2) | Wholesale liquor licensees  | \$ 400.00 per day  |
| 3) | Distributor beer licensees  | \$ 400.00 per day  |
| 4) | Retail licensees authorized to sell distilled spirits, wine or beer by the package or drink | \$ 50.00 per day   |
| 5) | All remaining licensees   | \$ 50.00 per day   |

**SECTION 20: NOTICE TO LICENSEE; SURRENDER OF LICENSE; HEARING.**

(A) (1) Within three days after any order of revocation of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in

the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section.

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

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

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

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

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

**SECTION 21: REFUSAL OF LICENSE.**

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

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

B) If the applicant has done any act for which a revocation of license would be authorized; and/or

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

(D) Failure to pay taxes (See KRS 243.490 (2)).

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

**SECTION 22: REVIEW OF LICENSE.**

Applicants to whom a license is issued which require certain food sales percentages shall provide periodic information demonstrating compliance with the continuing requirement that the required percentage of the applicant's business income is earned from the sale of food. This documentation shall be provided on a schedule to be coordinated with the applicant's ~~quarterly~~ monthly regulatory fee filings, in the event the 50% food requirement is not met during any particular ~~quarter~~ month, the City ABC Administrator shall have discretion in determining whether revocation is appropriate or whether the licensee may be allowed a reasonable period of time to reach compliance. If a good faith effort is demonstrated by the licensee, the City ABC Administrator may apply an accounting period of at least one year in determining whether or not the 50% minimum food requirement has been met.

**SECTION 23: REGULATORY LICENSE FEE.**

(A) Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee on the gross receipts of sale of alcoholic beverages of each license issued by the City ABC Administrator. As of the time of adoption of this chapter, the regulatory license fee shall be seven percent (7%) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the regulatory license fee shall be five percent (5%) of gross sales. The regulatory license fee shall be five percent (5%) on gross retail sales of package malt beverages. Thereafter, the City Council shall adopt at the budget adoption for each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the city for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the city. Should the city fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed until such time as the City Council shall adjust the fee.

(B) Payment of such regulatory fees shall be remitted to the City Clerk, and shall be held in a separate account maintained for the purpose of fully reimbursing the City for any estimated costs of any policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law; except that, a credit against a regulatory license fee in the City shall be allowed in an amount equal to any licenses or fees imposed by the City pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the fee returns approved for such use by the City Council. These returns and payments are due by the 20<sup>th</sup> of the month following the end of the ~~quarter~~ previous month.

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

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



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

(F) Annually, effective April 1 of each year commencing in 2016, the City Council shall review and establish the regulatory license fee for the ensuing year so as to conform to the requirements of this ordinance and KRS 243.075.

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

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

**SECTION 24: CHANGE OF INFORMATION.**

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

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

(C) (1) The following information will be required concerning any new director, officer or person securing any interest in alcoholic beverage license:

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

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

**SECTION 25: DORMANCY.**

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

(B) Any license under which no substantial business is transacted during a period of 90 days, or repeated shorter periods, shall be considered dormant and rescinded by the City ABC Administrator. For purposes of the preceding sentence, “no substantial business” means either no alcohol beverage transactions during the ninety (90) day period in question, or by using comparable data, the City ABC Administrator determines in his or her discretion that the license is being underutilized such that sales for such period(s) are twenty percent (20%) or more below expected sales for such period(s) and such deficiency is not caused by circumstances otherwise excused by this ordinance. Comparable data available to the City ABC Administrator may include, but not be limited to, sales data from comparable businesses and past sales data of the licensee in question. Upon a determination of dormancy by the City ABC Administrator, the license shall be surrendered to the City ABC Administrator. If the license is not voluntarily surrendered, it shall be revoked by the City ABC Administrator.

(C) The provisions of division (A) above shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, or the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain (whether the acquisition is voluntary or involuntary), or loss of lease through failure of landlord to renew existing lease. Such licensee shall furnish to the City ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business prior to the expiration of 90 days of inactivity, for any of the reasons set forth herein, and, the City ABC Administrator may grant an extension of the dormancy for such period as the Administrator, in his sole discretion, deems reasonable, advisable and warranted, with the license continuing to remain in effect during the license period or until same is transferred to another premises, notwithstanding the fact that no business is transacted during said period; provided, however, no such license shall be considered valid unless business is conducted thereunder within 12 months from the date of notice to the City ABC Administrator. Such extension may not extend beyond the renewal date but may be for such times as the City ABC Administrator deems appropriate in exercise of his or her discretion.

(D) All renewal licenses must be on file with the City ABC Administrator within 30 days prior to the expiration of the licenses for the preceding license period or the same shall be canceled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license prior due to construction, an act of God, casualty, death, the acquisition or threatened acquisition of these premises by any federal, state, city or other governmental agency or private corporation, possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to

renew existing lease; that said licensee shall file a written verified statement no less than 20, days from the expiration date of the license, setting forth these facts, and the City ABC Administrator is hereby authorized, to extend the time for filing of a renewal of such license for a reasonable length of time within the sound discretion of the City ABC Administrator; provided, however, such licensee shall pay a license fee from the expiration date of the former license or licenses. Said license fee shall not be payable until application is made for the transfer of said license to a new location.

**SECTION 26:            APPROVAL OF PREMISES.**

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

**SECTION 27:            DELINQUENT TAXES OR FEES.**

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

(B) Further, if a licensee becomes delinquent in the payment of any taxes or any fees due the City at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension.

**SECTION 28:            BOOKS, RECORDS REPORTS.**

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

(B) The original records of the ABC Administrator shall be kept in the office of the City Clerk. The ABC Administrator shall maintain a copy of those records in his/her office.

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

**SECTION 29:      COST OF ADDITIONAL POLICE PROTECTION FOR TEMPORARY EVENT**

If it is deemed necessary in the discretion of the City ABC Administrator, the licensee may be required as a condition of receiving a special temporary license, to contract directly with the City (by and through the City of Barbourville Police Department), at the expense of the licensee, to provide adequate security for the qualifying event.

**SECTION 30:      IMPLEMENTATION.**

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

**SECTION 31:      SEVERABILITY.**

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

**SECTION 32:      EFFECTIVE DATE.**

This Ordinance is effective upon final reading and publication.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
David Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Helen Strong, City Clerk

\_\_\_\_\_  
Date of First Reading

\_\_\_\_\_  
Date of Second Reading