

ORDINANCE NO. 0-18-17

**AN ORDINANCE RELATING TO ALCOHOLIC BEVERAGE CONTROL AND AMENDING ORDINANCE NO. 0-34-82, AS AMENDED, TO CONFORM TO RECENT CHANGES IN STATE LAW.**

WHEREAS, House Bill 183 was enacted by the 2017 Session of the General Assembly to make extensive changes in state law dealing with alcoholic beverages, licenses and permits, and administrators; and

WHEREAS, the City desires by this Ordinance to make the necessary changes to its Alcoholic Beverage Control Ordinances to conform to the new state law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FLORENCE, KENTUCKY, AS FOLLOWS:**

**SECTION I**

**Section I of Ordinance O-34-82 is hereby amended to read as follows:**

DEFINITIONS: As used in this Ordinance, unless the context requires otherwise:

(1) ~~“Alcohol” means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.~~

(2) ~~“Alcoholic beverage” means every liquid or sold, whether patented or not, containing alcohol in an amount in excess of that permitted under KRS Chapter 242, and capable of being consumed by a human being. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing alcohol or not. It does not include the following products if they are unfit for use for beverage purposes: (a) medicinal preparations manufactured in accordance with formulas prescribed by the United States pharmacopoeia, national formulary or the American Institute of Homeopathy; (b) patented, patent and proprietary medicines; (c) toilet, medicinal and antiseptic preparations and solutions; and (d) flavoring extracts and syrups.~~

- (1) “Alcohol” means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced;
- (2) “Alcoholic beverage” means every liquid, solid, powder, or crystal, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
  - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
  - (b) Patented, patent, and proprietary medicines;
  - (c) Toilet, medicinal, and antiseptic preparations and solutions;
  - (d) Flavoring extracts and syrups;
  - (e) Denatured alcohol or denatured rum;
  - (f) Vinegar and preserved sweet cider;
  - (g) Wine for sacramental purposes; and
  - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use;
- (3) (a) “Alcohol vaporizing device” or “AWOL device” means any device, machine, or process that mixes liquor, spirits, or any other alcohol product

- with pure oxygen or by any other means produces a vaporized alcoholic product used for human consumption;
- (b) “Alcohol vaporizing device” or “AWOL device” does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medical or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage;
- (4) “Automobile race track” means a facility primarily used for vehicle racing that has a seating capacity of at least thirty thousand (30,000) people;
- (5) “Bed and breakfast” means a one (1) family dwelling unit that:
- (a) Has guest rooms or suites used, rented, or hired out for occupancy or that are occupied for sleeping purposes by persons not members of the single-family unit;
- (b) Holds a permit under KRS Chapter 219; and
- (c) Has an innkeeper who resides on the premises or property adjacent to the premises during periods of occupancy;
- (6) “Board” means the State Alcoholic Beverage Control Board created by KRS 241.030;
- (7) “Bottle” means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;
- (8) “Brewer” means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either alone or through an agent;

- (9) “Brewery” means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or whether any of the products of brewing or fermentation are stored or kept;
- (10) “Building containing licensed premises” means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any ~~other~~ building connected ~~with the building by direct access or by a common entrance.~~ by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;
- (11) “Caterer” means a person operating a food services business that prepares food in a licensed and inspected commissary, transports the food and alcoholic beverages to the caterer’s designated and inspected banquet hall or to an agreed location and serves the food and alcoholic beverages pursuant to an agreement with another person;
- (12) “Charitable organization” means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501 (c) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue

exclusively for religious, educational, Literary, civic, fraternal, or patriotic purposes;

(13) “Cider” means any fermented fruit-based beverage containing seven percent (7%) or more alcohol by volume and includes hard cider and perry cider;

~~(4)~~ (14) “City Administrator means the City of Florence Alcoholic Beverage Control Administrator;

(15) “Commercial airport” means an airport through which more than five hundred thousand (500,000) passengers arrive or depart annually;

(16) “Commercial quadricycle” means a vehicle equipped with a minimum of ten (10) pairs of fully operative pedals for propulsion by means of human muscular power exclusive and which:

(a) Has four (4) wheels;

(b) Is operated in a manner similar to that of a bicycle;

(c) Is equipped with a minimum of thirteen (13) seats for passengers;

(d) Has a unibody design;

(e) Is equipped with a minimum of four (4) hydraulically operated brakes;

(f) Is used for commercial tour purposes; and

(g) Is operated by the vehicle owner or an employee of the owner;

(17) “Commissioner” means the commissioner of the Department of Alcoholic Beverage Control;

(18) Convention center” means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers

convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;

- ~~(5)~~ (19) “Convicted” and “conviction” means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;
- (20) “County administrator” means county alcoholic beverage control administrator;
- (21) “Department” means the Department of Alcoholic Beverage Control;
- (22) “Dining car” means a railroad passenger car that serves meals to consumers on any railroad or Pullman car company;
- (23) “Discount in the usual course of business” means price reductions, rebates, refunds, and discounts given by wholesalers to distilled spirits and wine retailers pursuant to an agreement made at the time of the sale of the merchandise involved and are considered a part of the sales transaction, constituting reductions in price pursuant to the terms of the sale, irrespective of whether the quantity discount was:
- (a) Prorated and allowed on each delivery;
- (b) Given in a lump sum after the entire quantity of merchandise purchased had been delivered; or
- (c) Based on dollar volume or on the quantity of merchandise purchased;
- ~~(6)~~ (24) “Distilled spirits” or “spirits” means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS

Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;

(25) “Distiller” means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky;

(26) “Distillery” means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse;

~~(7)~~ (27) “Distributor” means any person who distributes malt beverages for the purpose of being sold at retail;

(28) “Horse racetrack” means a facility licensed to conduct a horse race meeting under KRS Chapter 230;

(29) “Hotel” means a hotel, motel, or inn for accommodation of the traveling public, designed primarily to serve transient patrons;

(30) “Investigator” means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting licensees, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes;

- (8) (31) “License” means any license issued pursuant to this Ordinance or KRS Chapters 241 to 244;
- (9) (32) “Licensee” means any person to whom a license has been issued, pursuant to this Ordinance or KRS Chapters 241 to 244;
- (33) “Local Administrator” means a city alcoholic beverage administrator, county alcoholic beverage administrator, or urban-county alcoholic beverage control administrator;
- (10) (34) “Malt beverage” means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, ~~and having an alcoholic content greater than that permitted under KRS Chapter 242.~~ and includes weak cider;
- (35) “Manufacture” means distill, rectify, brew, bottle, and operate a winery;
- (36) “Manufacturer” means a winery, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages;
- (37) “Minor” means any person who is not twenty-one (21) years of age or older;
- (11) (38) “Premises” means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. It shall not include as a single unit two (2) separate businesses or enterprises of one (1) owner on the same lot or tract of land, in the same or in different buildings; if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee



holding an alcoholic beverage license on July 15, 1998, shall not, by reason of this subsection, be ineligible to continue to hold its license or obtain a renewal of the license;

(39) “Primary source of supply” or “supplier” means the distiller, winery, brewer, producer, owner of the commodity at the time it becomes a marketable product, bottler, or authorized agent of the brand owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler, or agent of the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler, or owner;

(40) “Private club” means a nonprofit social, fraternal, military, or political organization, club, or entity maintaining or operating a club room, club rooms, or premises from which the general public is excluded;

(41) “Public nuisance” means a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons;

(42) “Qualified historic site” means:

(a) A contributing property with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served within a commercial district listed in the National Register of Historic Places;

- (b) A site that is listed as a National Historic Landmark or in the National Register of Historic Places with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served;
- (c) A distillery which is listed as a National Historic Landmark and which conducts souvenir retail package sales under KRS 243.0305; or
- (d) A not-for-profit facility listed on the national Register of Historic Places;
- (43) “Rectifier” means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name;
- (44) “Repackaging” means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made;
- (45) “Restaurant” means a facility where the usual and customary business is the preparation and serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and alcoholic beverage receipts from the sale of food at the premises;
- (46) “Retail container” means any bottle, can, barrel, or other container which, without a separable intermediate container holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not;

- (12) ~~(47)~~ “Retail sale” means any sale where delivery is made in Kentucky to any ~~person not holding a license.~~ consumers;
- (13) ~~(48)~~ “Retailer” means any ~~licensee person~~ who sells ~~and delivers—~~ at retail— any alcoholic beverage ~~for the sale of which a license is required.~~ to consumers, except for producers with limited retail sale privileges;
- ~~(14)~~ ~~(49)~~ “Sale” means any transfer, exchange or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant or employee of any alcoholic beverage.
- ~~(50)~~ “Service Bar” means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar;
- ~~(15)~~ ~~(51)~~ “Sell” includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.
- ~~(52)~~ “Small farm winery” means a winery whose wine production is not less than two hundred fifty (250) gallons and not greater than one hundred thousand (100,000) gallons in a calendar year;
- ~~(53)~~ “Souvenir package” means a special package of distilled spirits available from a licensed retailer that is:
- (a) Available for retail sale at a licensed Kentucky distillery where the distilled spirits were produced or bottled; or

- (b) Available for retail sale at a licensed Kentucky distillery but produced or bottled at another of that distiller's licensed distilleries in Kentucky;
- (54) "State administrator" or "administrator" means the distilled spirits administrator or the malt beverages administrator, or both, as the context requires;
- (55) "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar;
- (56) "Territory" means a county, city, district, or precinct;
- (57) "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages;
- (58) "Warehouse" means any place in which alcoholic beverages are housed or stored;
- (59) "Weak cider" means any fermented fruit-based beverage containing more than one percent (1%) but less than seven percent (7%) alcohol by volume;
- (16) (60) "Wholesale sale" means a sale to any person for the purpose of resale.
- (17) (52) "Wholesaler" means any person who ~~sells at wholesale any alcoholic beverage for the sale of which a license is required, except a distiller, rectifier, brewer or vintner~~ distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet;
- (18) (53) "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual ~~cellar treatment and necessary additions to correct defects~~

~~due to climatic, saccharine and seasonal conditions. processes of manufacture and normal additions, and~~ It includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four (24%) by volume. It includes sake, cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It does not include weak cider;

- (54) “Winery” means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded, except a place or premises that manufactures wine for sacramental purposes exclusively.

## **SECTION II**

LICENSE REQUIRED TO TRAFFIC IN ALCOHOLIC BEVERAGES: No person, firm or corporation shall do any act authorized by any kind of license provided for in this Ordinance with respect to the storage, sale, purchase, transporting or other traffic in alcoholic beverages unless such person, firm or corporation holds the kind of license from the City of Florence, Kentucky, which authorizes such act. No person, firm or corporation which conducts a place of business patronized by the public and which does not hold a license to sell distilled spirits and wine or malt beverages shall permit any person to sell, barter, loan, give away or drink distilled spirits or wine or malt beverages on the premises of his place of business.

## **SECTION III**

SECTION III of Ordinance No. O-34-82, as last amended by Ordinance No. 0-12-13 is hereby amended to read as follows:

TYPES OF LICENSES AND FEES: The following kinds of distilled spirits and wine licenses and malt beverage licenses may be issued by the City of Florence and the fees for each such license shall be:

1. Distilled Spirit licenses:
  - a. Distiller's license, per annum .....\$500.00
  - b. Rectifier's license, per annum .....\$3,000.00
  - c. Blender's license, per annum .....\$3,000.00
  - d. Wholesale's distilled spirits and wine license, per annum .....\$3,000.00
  - e. Distilled spirits and wine retail package license, per annum .....800.00
2. Distilled spirits and wine retail drink license, motel drink license, airport drink license, restaurant —drink license, or supplemental bar license, per annum .....\$800.00
3. Distilled spirits and wine special temporary liquor license, per annum .....\$133.33
4. Special temporary wine license, per event.....\$50.00
5. Distilled spirits and wine special temporary auction license, per event .....\$200.00
6. Special private club license, per annum .....\$300.00
7. Distilled spirits and wine special Sunday retail drink license, per annum .....\$300.00
8. Extended hours supplemental license, per annum .....\$2,000.00
9. Nonresident special agent or solicitor's license, per annum.....\$40.00
10. Restaurant wine license, per annum:
  - a. New applicants .....\$600.00
  - b. Applicants for renewal .....\$400.00
11. Caterer's license, per annum.....\$800.00
12. Riverboat license, per annum.....\$1,200.00
13. Horse race track license, per annum .....\$2,000.00
14. Convention center or convention hotel complex license, per annum .....\$2,000.00
15. Bottling house distilled spirits license or wine storage license, per —annum .....\$1,000.00
16. Souvenir retail liquor license, per annum .....\$1,000.00
17. 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. Retail malt beverage license, per annum.....\$200.00
  - e. Special temporary retail malt beverage license, per event .....\$25.00
  - f. Malt beverage brew on premises license, per annum.....\$100.00
18. Automobile racetrack license, per annum .....\$1,000.00

Distilled Spirit licenses as set forth in KRS 243.030:

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

b. Rectifier's license, per annum.....	\$3,000.00
c. Wholesaler's distilled spirits and wine license, per annum.....	\$3,000.00
d. Quota retail package license, per annum.....	\$800.00
e. Quota retail drink license, per annum.....	\$800.00
f. Special temporary license, per event .....	\$133.33
g. Nonquota type 1 retail drink license (includes distilled spirits, wine — and malt beverages), per annum.....	\$2,000.00
h. Nonquota type 2 retail drink license (includes distilled spirits, wine — and malt beverages), per annum.....	\$1,000.00
i. Nonquota type 3 retail drink license (includes distilled spirits, wine — and malt beverages), per annum .....	\$300.00
j. Distilled spirits and wine special temporary auction license, per event .....	\$200.00
k. Special Sunday retail drink license, per annum .....	\$300.00
— l. Extended hours supplemental license, per annum.....	\$2,000.00
— m. Caterer's license, per annum .....	\$800.00
— n. Bottling house or bottling house storage license, per annum .....	\$1,000.00

Malt Beverage Licenses as follows:

a. Brewer's license, per annum.....	\$500.00
b. Microbrewery license, per annum .....	\$500.00
c. Malt Beverage distributor's license, per annum .....	\$400.00
d. Nonquota retail malt beverage package license, per annum.....	\$200.00
e. Nonquota type 4 retail malt beverage drink license, per annum.....	\$200.00
f. Malt beverage brew on premises license, per annum.....	\$100.00

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

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

— 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.

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

- (1) The license fees are subject to the provisions of subsections (2), (3), and (4) of this section, and shall not exceed the amounts specified in this subsection:

(a) <u>Distiller's license, per annum</u>	<u>\$500.00</u>
(b) <u>Rectifier's license:</u>	
1. <u>Class A per annum</u>	<u>\$3,000.00</u>
2. <u>Class B (craft rectifier), per annum</u>	<u>\$960.00</u>
(c) <u>Wholesaler's distilled spirits and wine license, per annum</u>	<u>\$3,000.00</u>
(d) <u>Quota retail package license, per annum</u>	<u>\$1,000.00</u>
(e) <u>Quota retail drink license, per annum</u>	<u>\$1,000.00</u>
(f) <u>Special temporary license, per event</u>	<u>\$166.66</u>
(g) <u>Nonquota type 1 retail drink license, per annum</u>	<u>\$2,000.00</u>
(h) <u>Nonquota type 2 retail drink license, per annum</u>	<u>\$1,000.00</u>
(i) <u>Nonquota type 3 retail drink license, per annum</u>	<u>\$300.00</u>
(j) <u>Special temporary alcoholic beverage auction license, per event</u>	<u>\$100.00</u>
(k) <u>Special Sunday retail drink license, per annum</u>	<u>\$300.00</u>
(l) <u>Extended hours supplemental license, per annum</u>	<u>\$2,000.00</u>
(m) <u>Caterer's license, per annum</u>	<u>\$800.00</u>
(n) <u>Bottling house or bottling house storage license, per annum</u>	<u>\$1,000.00</u>
(o) <u>Brewer's license, per annum</u>	<u>\$500.00</u>
(p) <u>Microbrewery license, per annum</u>	<u>\$500.00</u>
(q) <u>Malt beverage distributor's license, per annum</u>	<u>\$400.00</u>
(r) <u>Nonquota retail malt beverage package license, per annum</u>	<u>\$200.00</u>
(s) <u>Nonquota type 4 retail malt beverage drink license, per annum</u>	<u>\$200.00</u>
(t) <u>Limited restaurant license, per annum</u>	<u>\$1,200.00</u>
(u) <u>Limited golf course license, per annum</u>	<u>\$1,200.00</u>
(v) <u>Authorized public consumption license, per annum</u>	<u>\$250.00</u>
(w) <u>Qualified historic site license, per annum</u>	<u>\$1,030.00</u>

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

- (a) Quota retail package license: retail package liquor license;
- (b) Quota retail drink license: retail drink license;
- (c) Nonquota type 1 retail drink license: convention center or convention hotel complex license;
- (d) Nonquota type 2 retail drink license: restaurant drink license;
- (e) Nonquota retail malt beverage package license: retail malt beverage license;
- (f) Nonquota type 4 retail malt beverage drink license: retail malt beverage license;
- (g) Limited restaurant license; and



- (h) Limited golf course license.
- (3) 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.
- (4) The holder of a nonquota retail malt beverage package license may obtain a Nonquota type 4 malt beverage drink license for a fee of fifty dollars (\$50). The holder of a Nonquota type 4 malt beverage drink license may obtain a nonquota retail malt beverage package license for a fee of fifty dollars (\$50).

#### **SECTION IV**

The business authorized under the various licenses provided for in Section III hereof shall be identical to the business authorized by the State licenses to which the licenses herein so provided for correspond.

#### **SECTION V**

SECTION V of Ordinance No. 0-34-82 was last amended by Ordinance No. O-12-13 and reads as follows:

ISSUANCE OF LICENSE: Application for the issuance or renewal of all licenses provided for in this Ordinance shall be made to the Finance Department for approval by the City Alcoholic Beverage Control Administrator on such forms as may be prescribed by the City Administrator. Licenses shall be issued or renewed and fees collected by the Finance Department. No license shall be issued without the approval of the City Administrator. Licenses shall be issued in such form as may be prescribed by the City Administrator. All license fees collected pursuant hereto shall be placed in the General Fund of the City.

## **SECTION VI**

SECTION VI of Ordinance No. O-34-82 was last amended by Ordinance No. O-12-13 and reads as follows:

INFORMATION TO BE CONTAINED IN APPLICATIONS: All applications for licenses shall be on forms furnished by the City. They shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought as the City Administrator may require.

If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the City Administrator within ten (10) days after the change.

In giving any notice, or taking any action in reference to a license, the City Administrator 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.

## **SECTION VII**

SECTION VII of Ordinance No. O-34-82 was last amended by Ordinance No. 0-12-13 and reads as follows:

TERMS OF LICENSE: All licenses issued hereunder shall expire on November 30<sup>th</sup> of each year. The renewal of any alcoholic beverage license shall not be construed to be a waiver of condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the license therefor.

When any person applies for a license authorized to be issued hereunder, on or after June 1 of any year, he shall be charged, if the license is issued, an amount equal to one-half of the annual license fee until the following December 1. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.

### **SECTION VIII**

SECTION VIII of Ordinance No. 0-34-82 was last amended by Ordinance No. 0-12-13 and reads as follows:

**DISPLAY OF LICENSE:** Before commencing or doing any business for the time for which a license has been issued, the license shall be posted and at all times displayed 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.

No licensee shall post the license or permit it to be posted, upon premises other than the licensed premises or upon premises where traffic alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

### **SECTION IX**

**STATE LICENSE REQUIRED:** No license provided for hereunder shall be issued, renewed or transferred to any person, firm or corporation until such person, firm or corporation shall have first obtained the issuance, renewal or transfer of the state license corresponding

thereto. In each instance, the licensed premises covered by the City of Florence license must be the same as the licensed premises covered by the corresponding state license.

The City of Florence license issued to any person, firm or corporation shall remain valid only so long as the state license corresponding thereto issued to such person, firm or corporation shall be valid and any revocation, suspension, non-renewal, or other action which makes the state license null and void shall operate to revoke, suspend, make non-renewable or null and void the City of Florence license corresponding thereto. Any City of Florence license which is revoked, suspended, not renewed or so made invalid shall be immediately surrendered to the City Administrator.

## **SECTION X**

SECTION X of Ordinance No. 0-34-82 was last amended by Ordinance No. O-12-13 and reads as follows:

HOURS WHEN SALES PERMITTED: A Licensee may sell alcoholic beverages or do any act authorized by the licensee's license with respect to the sale of alcoholic beverages only during the hours hereinafter set out for each such license.

(1) Distilled spirits package license: During the period between 6:00 a.m. to 1:00 a.m. daily, except Sunday and from 11:00 a.m. to midnight on Sunday.

(2) Distilled spirits drink license: During the period between 6:00 a.m. to 2:30 a.m. daily except Sunday and from 1:00 p.m. to midnight on Sunday.

(3) Distilled spirits and wine wholesaler's license and malt beverage distributor's license: During the period between 6:00 a.m. and midnight every day except Sunday.

(4) Retail Malt beverage licenses: During the period between the hours of 6:00 a.m. to 2:30 a.m. daily except Sunday and from 11:00 a.m. to midnight on Sunday.

(5) Extended hours supplemental license: During the period between 6:00 a.m. to 4:30 a.m. daily except Sunday and from 1:00 p.m. to 2:30 a.m. on Sunday.

(6) Special Sunday Retail Drink License: 11:00 a.m. to midnight except when New Year's Eve (Dec. 31) falls on a Sunday, then until 2:30 a.m. on the following New Year's Day (January 1).

If a licensee provides a separate department within his licensed premises capable of being locked and closed off, within which is kept all stocks of alcoholic beverages and all fixtures and apparatus connected with his business as a licensee, and said department is kept locked during all times when his premises are open and he is not authorized to sell alcoholic beverages hereunder, he shall be deemed to have complied with this section.

## **SECTION XI**

VIOLATION OF ANY STATE OR FEDERAL LAW A VIOLATION OF THIS ORDINANCE, LICENSE MAY BE REVOKED FOR VIOLATION: Nothing herein contained shall be construed to condone the violation by any person, firm or corporation within the City of Florence, Kentucky of any Federal or State statute, law or regulation, now, heretofore or hereafter in effect applicable to such person, firm or corporation relating to the storage, sale, purchase, transporting or other traffic in alcoholic beverages and any violation of any such statute, law or regulation shall be deemed a violation of this ordinance. If any clerk, agent, servant, or employee of any licensee shall violate any provision of this Ordinance or any such statute, law or regulation, such violation shall be a violation by the licensee.

Any license issued hereunder may be revoked by the City Alcoholic Beverage Control Administrator if the licensee shall have violated any provision of this Chapter or any provision of any statute, law or regulation.

## **SECTION XII**

SECTION XII of Ordinance No. O-34-82 as last amended by Ordinance No. O-2-03 is hereby amended to read as follows:

PENALTIES: Pursuant to KRS 83A.065(2) the offense of violating any provision of ~~Ordinance No. O-34-82 or Ordinance No. O-11-87 or~~ this Ordinance is designated as a misdemeanor and a criminal fine not to exceed the amount set forth in KRS 534.040(2)(a), or a term of imprisonment not to exceed the periods set forth in KRS 532.090(1), or both, may be imposed on any person, firm or corporation who, acting by himself or through another, directly or indirectly, commits the offense.

## **SECTION XIII**

SECTION XIII of Ordinance No. O-34-82, as last amended by Ordinance No. O-2-03 is hereby amended as follows:

CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR: There is hereby created the office of City of Florence Alcoholic Beverage Control Administrator (the "City Administrator"). The City Administrator shall be appointed by the Mayor.

The City Administrator before entering upon his duties as such, shall take the oath prescribed in Section 228 of the Constitution ~~and shall execute a bond with a good corporate surety in the penal sum of not less than ONE THOUSAND DOLLARS (\$1,000.00).~~ and shall immediately notify the Department of qualifications and appointment.

~~The City Councilman to serve as City Administrator may require any City employee under his supervision to execute a similar bond in such penal sum as he deems necessary.~~

~~The cost of bonds given under this section shall be borne by the City.~~

~~The functions of City Administrator shall be the same with respect to City licenses and regulation as the functions of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky with respect to state licenses and regulations.~~

No person shall be an administrator, an investigator, or an employee of the City under the supervision of the City Administrator, who would be disqualified to be a member of the board under KRS 241.100.

The City Administrator shall have the same duties and functions regarding local license applications and renewals as the department with respect to state licenses. The City Administrator shall have the same duties and functions regarding local license penalization as the board with respect to state license penalization.

The City Administrator shall, pursuant to KRS 243.450(1)(b), provide notification to the State Administrator that an applicant has obtained approval for a City license at premises proposed for a state license. Such notification shall be provided at the time and in the manner prescribed by the State Administrator.

Decisions or orders issued by the City Administrator shall be in writing and be mailed or delivered by personal service to the applicant or License holder affected. Decisions or orders of the City Administrator may be appealed to the Board as set forth in KRS 241.200.

The City Administrator shall deny a license:

- (a) If the applicant or the premises for which the license is sought does not comply fully with all alcoholic beverage control statutes, ordinances and the administrative regulations of the board or the City;
- (b) If the applicant has done any act for which a revocation of license would be authorized; or
- (c) If the applicant has made any false material statement in its application.
- (d) if the applicant has not obtained any state license required at the proposed premises;
- (e) If the applicant has not obtained a City of Florence Occupational License for operation allowed by the License at the proposed premises;  
and
- (f) If the applicant is indebted to the City for any unpaid taxes, fees, utility charges, fines, liens or assessments.

A License may be revoked or suspended by the City Administrator for a violation of any of the following:

- (1) Any of the provisions of KRS Chapters 241 to 244;
- (2) Any administrative regulation of the board relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages;
- (3) Any rule or administrative regulation of the Department of Revenue relating to the taxation of alcoholic beverages;
- (4) Any Act of Congress or any rule or regulation of any federal board, agency, or commission;



- (5) Any City ordinance relating to the regulation of the manufacture, sale, and transportation or taxation of alcoholic beverages;
- (6) Any of the laws, regulations, or ordinances referred to in this section 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 the Licensee's instructions;
- (7) Any of the reasons for which the City Administrator would have been required to deny a License if existing material facts had been known.
- (8) Conviction of Licensee or the Licensee's agent, servant, or employee for selling any illegal alcoholic beverages on the licensed premises;
- (9) Making any false, material statements in an application or renewal application for a License or supplemental License.
- (10) Conviction of the Licensee or any of the Licensee's agents, servants, or employees of:
  - (a) Two (2) violations of the terms and provisions of KRS Chapters 241 to 244, or any act regulating the manufacture, sale, and transportation of alcoholic beverages within two (2) consecutive years;
  - (b) Two (2) misdemeanors directly or indirectly attributable to the use of alcoholic beverages within two (2) consecutive years; or
  - (c) Any felony.

- (11) Failure or default of a Licensee to pay an excise tax or any part of the tax or any penalties imposed by or under the provisions of any statutes, ordinances, or Acts of Congress relative to taxation, or for a violation of any related administrative regulations promulgated by the Department of Revenue.
- (12) Revocation, suspension or expiration of any License issued by the department.
- (13) Setting up, conducting, operating, or keeping, on the licensed premises, any gambling game, device, machine, contrivance, lottery, gift enterprise, 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 gambling game, device, machine, contrivance, lottery, gift enterprise, handbook or facility. This subsection shall not apply to:
  - (a) The sale of lottery tickets sold under the provisions of KRS Chapter 154A:
  - (b) The operation of a pari-mutual system for betting where authorized by law;
  - (c) The conduct of charitable gaming by a charitable organization licensed or permitted under KRS Chapter 238; or
  - (d) Special temporary raffles of alcoholic beverages under KRS 243.036.
- (14) Conviction of the Licensee, the Licensee's agents, servants, or employees for:
  - (a) The trafficking or possession upon the licensed premises of controlled or illegal substances described in KRS Chapter 218A, including synthetic drugs;

- (b) Knowingly permitting the trafficking or possession by patrons upon the licensed premises of controlled or illegal substances described in KRS Chapter 218A, including synthetic drugs; or
- (c) Knowingly receiving stolen property upon the licensed premises.
- (15) Failure to prevent or suppress any violent quarrel, disorder, brawl, fight or other improper or unlawful conduct of any person who is upon the premises;
- (16) Failure to immediately report to the proper law enforcement authorities an illegal or violent act that has been committed on or about the premises when the Licensee or his/her employee knew or should have known that said act occurred upon the premises;
- (17) Failure to cooperate fully with law enforcement authorities during the course of an investigation into an illegal or violent act that was committed on or about the licensed premises;
- (18) Permitting or allowing the premises, on which the business for which the License was issued are located or the premises adjacent thereto under the control of the licenseholder, to be used for any unlawful purpose or in an unlawful manner.

#### **SECTION XIV**

##### **APPEALS AND PROCEDURES FOR HEARINGS BEFORE THE CITY**

ADMINISTRATOR: Appeals and Hearings before the City Administrator shall be conducted as follows:

- A. LICENSE DENIAL: An applicant desiring to contest the denial of issuance of a License may appeal to the board as specified in KRS 241.200.
- B. REVOCATION OR SUSPENSION OF LICENSES: The City may on its own initiative or on the complaint of any person, institute administrative proceedings before the City Administrator to revoke or suspend any License. A License may be revoked or suspended after the Licensee has been afforded the opportunity for a hearing conducted in accordance with the procedure outlined below.
- C. PROCEDURE: Complaints seeking suspension or revocation of a License on the initiative of the City may be filed with the City Administrator by the Mayor or any person designated as a Code Enforcement Officer by Ordinance No. 0-10-16. The complaint shall contain: A statement of the factual basis for the revocation or suspension along with a statement of issues involved, in sufficient detail to give the Licensee reasonable opportunity to prepare evidence and argument.
- Complaints received from persons other than City officials shall be in writing, under oath, and shall in plain language describe the factual basis for the action sought.
- The City Administrator may issue an emergency order summarily suspend a License upon finding that continued operation of the License holder pending a hearing would constitute a threat to the public health, safety, or welfare.

D.     NOTICE OF HEARING: Upon receipt of a Complaint, the City Administrator shall:

- (1)     Conduct the hearing as soon as practicable and shall given notice of the hearing to the Licensee not less than ten (10) days in advance of the date set for the hearing;
- (2)     The notice required shall be served on the Licensee by first class mail, sent to the last known address, or by personal service;
- (3)     The notice shall be in plain language and shall include:
  - (a)     A statement of the date, time, place and nature of the hearing;
  - (b)     The name and mailing address of the City Administrator;
  - (c)     A reference to the specific statutes and administrative regulations which relate to the issues involved.
  - (d)     A statement advising the Licensee of the right to legal counsel;
  - (e)     A statement of the Licensee's right to examine, at least five (5) days prior to the hearing, a list of witnesses the Licensee expects to call at the hearing, any evidence to be used at the hearing and any exculpatory information in the Licensee's possession; and
  - (f)     A statement advising that a Licensee who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.
  - (g)     A statement that the hearing may result in suspension or revocation of the License.

E.     CONDUCT OF HEARING:

- (1) The City Administrator shall preside over the hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing.
- (2) The City Administrator, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions and objections.
- (3) The City Administrator may issue subpoenas and discovery orders when requested by a party or on his own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as a contempt of the court.
- (4) To the extent necessary for the full disclosure of all relevant facts and issues, the City Administrator shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.
- (5) Any party to the hearing may participate in person or be represented by counsel
- (6) The hearing shall be open to the public unless specifically closed pursuant to a provision of law.

F. FINDINGS; EVIDENCE; RECORDING OF HEARING; BURDENS OF PROOF:

- (1) Findings by the City Administrator shall be based exclusively on the evidence on the record. The City Administrator shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this

Commonwealth. Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support Findings unless it would be admissible over objections in civil action.

- (2) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.
- (3) Objections to evidentiary offers may be made by any party and shall be noted in the record.
- (4) The City shall cause all testimony, motions, and objections in a hearing to be accurately and completely recorded. Any person, upon request, may receive a copy of the recording or a copy of the transcript, if the hearing has been transcribed, at the discretion of the City, unless the hearing is closed by law. The agency may prepare a transcript of a hearing or a portion of a hearing upon request but the party making the request shall be responsible for the transcription costs; The form of all requests and fees charged shall be consistent with KRS 61.870 to 61.884
- (5) Not later than seven (7) business days following the conclusion of the hearing, the City Administrator shall issue a decision or order which shall set out the final disposition of the charges together with findings and conclusions which form the basis of that action.

G. A Licensee desiring to contest a decision of the City Administrator dealing with revocation or suspension of a License may appeal to the Board as specified in KRS 241.200.

#### **SECTION XV**

If any section, paragraph, clause, provision or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, provisions or phrases of this Ordinance, or this Ordinance as an entirety, it being the legislative intent that this Ordinance shall be valid notwithstanding the invalidity of any section, sentence, clause, provision or phrase.

#### **SECTION XVI**

This Ordinance shall be published in full.

PASSED AND APPROVED ON FIRST READING THIS 28<sup>th</sup> DAY OF November, 2017.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS 12<sup>th</sup> DAY OF December, 2017.

APPROVED:

ATTEST:

Erin M. Coruets  
CITY CLERK

Deane & Whalen  
MAYOR