COMMONWEALTH OF KENTUCKY
OLDHAM COUNTY
ORDINANCE NO. KOC 16-410-76

*****

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. KOC 14-410-460 RELATING TO THE SALE OF ALCOHOLIC BEVERAGES IN OLDHAM COUNTY.

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WHEREAS, under KRS 67.083(n) and other applicable laws, Oldham County Fiscal Court has the authority to pass ordinances regulating the sale and transfer of alcoholic beverages; and,

WHEREAS, the sale and transfer of alcoholic beverages is now authorized in Oldham County pursuant to an election held on December 29, 2015 under KRS 242.020, whereby said citizens of Oldham County voted to allow said sale and transfer of alcoholic beverages; and,

WHEREAS, Oldham County Fiscal Court finds it necessary to regulate said sale and transfer of alcoholic beverages.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF OLDHAM COUNTY, KENTUCKY THE FOLLOWING:

ARTICLE I: IN GENERAL

Purpose:

The purpose of this ordinance is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage sales in Oldham County. The provisions of the Alcoholic Beverage Control Laws and Administrative Regulations of the Commonwealth of Kentucky (KRS Chapters 241 through 244 and all amendments and supplements thereto, are adopted in full, as far as applicable, as a portion of this ordinance except as otherwise lawfully provided herein.

The Oldham County Alcoholic Beverage Control (ABC) Administrator shall administer all Alcoholic Beverage Control Ordinances and regulations of the county and all statutes of the Commonwealth of Kentucky relating thereto and the regulations of the Kentucky Alcoholic Beverage Control Board.

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

ARTICLE II: DUTIES OF THE OFFICE OF THE COUNTY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

(a) The County Judge-Executive shall serve as the County Alcoholic Beverage Control Administrator (hereinafter referred to as the County ABC Administrator), unless the County Judge-Executive appoints someone else to fill the position, KRS 241.110.

(b) The County Judge-Executive may from time to time appoint such additional personnel as is necessary to assist the County ABC Administrator in the administration of this ordinance with approval from Fiscal Court.

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

(d) The functions of the County ABC Administrator shall be the same with respect to county licenses and regulations as the function of the Alcoholic Beverage Control Board of the Commonwealth of Kentucky (hereinafter referred to as the ABC Board) with respect to state licenses and regulations, except that no amendment to these regulations proposed by the County ABC Administrator may be less stringent than the statutes relating to alcoholic beverage control, or than the regulations of the ABC Board. No regulation of the County ABC Administrator shall become effective until it has first been approved by Fiscal Court.

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

(f) The County ABC Administrator shall have all authority as authorized under Chapters 241 through 244 of the Kentucky Revised Statutes. The County ABC Administrator may deny a license application for any reasonable cause which the administrator deems sufficient, including but not limited to public sentiment in the area, the number of licensed outlets in the area, potential future growth, the type of area involved, the type of transportation available, and the financial potential of the area, pursuant to KRS 243.370.

(g) The County ABC Administrator shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars ($1,000.00). This provision is waived if the County Judge-Executive remains as County ABC Administrator.

(h)Appeals from the orders of the County ABC Administrator may be taken to the state ABC Board by filing with the Board within thirty (30) days a certified copy of the orders of the County ABC Administrator. Matters at issue shall be heard by the state ABC Board as an original proceeding. Appeals from the orders of the County ABC Administrator shall be governed by KRS Chapter 13B.

ARTICLE III: APPLICATION/LICENSES

(a) Before an application shall be considered, the applicant must publish a notice of its intent to apply for an alcoholic beverage license in a newspaper in accordance with KRS 243.360 and meeting the requirements of KRS Chapter 424.

(1)The advertisement shall state the names and addresses of the members of the partnership if the applicant is a partnership, the name and addresses of the members of an LLC if the applicant is an LLC, 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 officers and directors of the corporation, as well as the name and addresses of the corporation itself, the location of the premises for which the license is sought, and the type of license for which application is made.

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

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

(c) The application shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the licenses is sought as required by the Kentucky Revised Statutes, and the ABC Board and Oldham County, including as follows:

1) Name and address;

2) Nature of interest;

3) Whether or not applicant is a citizen of the United States;

4) Date of birth and Social Security Number;

5) Date residence was established in Kentucky, if a resident of Kentucky. If Oldham County resident indicate when residence was established;

6) Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this ordinance;

7) Extent of stock (or percentage) ownership;

8) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province.

Each application shall be collected by the ABC Administrator and accompanied by a certified check, cash or a postal or express money order for the license fee made out to Oldham County Fiscal Court. The County ABC Administrator shall transmit fees upon collection to the County Treasurer to be deposited in the appropriate designated account.

(d) All applicants shall voluntarily submit to a criminal background check and shall sign a waiver allowing the release of this information to the County ABC Administrator.

(e) All County licenses shall be in such form as may be prescribed by the Fiscal Court and shall contain:

1) The name and address of the licensee;

2) The number of license;

3) The type of license;

4) A description by street and number, or otherwise, of the licensed premises;

5) The name and address of the owner of the building in which the licensed premises are located;

6) The expiration date of the license;

7) A statement in substance that the license shall not be a property or vested right and that it may be revoked at any time pursuant to law.

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

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

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

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

ARTICLE IV: DELINQUENT TAXES; LICENSE WITHHELD

No license to sell alcoholic beverages shall be granted to any person who is delinquent in the payment of any taxes due to Oldham County Fiscal Court at the time of issuing the license. Nor shall any license be granted to sell on any premises or property, owned and occupied by the licensee, on which there are any delinquent taxes or liens or any other obligations owed to any Oldham County public agency.

Where the property or premises on which a license to sell is sought, is rented or occupied by the applicant for a license but is owned by another, no license shall be granted if the taxes or liens of the Oldham County Fiscal Court due on the property or premises have not been paid. In such cases, the County ABC Administrator may not issue a license to sell alcohol until he has received from the applicant a written statement from the Oldham County Sheriff which indicates that the applicant for the license and the owner of the property or premises on which the license is sought have paid in full all unpaid and delinquent taxes or other obligation(s) owed to any Oldham County Public Agency.

ARTICLE V: FORFEITURES

If any license issued under this chapter is revoked or cancelled for any reason by the County ABC Administrator, the licensee shall forfeit any and all claims, which the licensee might otherwise have had to any portion of the license fee paid by the licensee on the issuing of the license.

The County ABC Administrator shall transmit fees upon collection to the County Treasurer to be deposited into the appropriate designated account. County licenses shall be issued by the County ABC Administrator upon receipt of notice from the ABC Board Administrator of the applicant's approved application.

ARTICLE VI: REFUND OF LICENSE FEES

Should any licensee under this ordinance be prohibited from conducting said business for the full period covered by the license because of any changes that may hereafter be made in the laws of the Commonwealth of Kentucky with reference to alcoholic beverages or other cause outside licensee's control, Oldham County Fiscal Court 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 County 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.

ARTICLE VII: LOST OR DESTROYED LICENSE

When a license shall be lost or destroyed without fault on the part of the licensee or his agent or employee, a duplicate in lieu of the original license shall be issued by the County ABC Administrator after the Administrator has been satisfied as to the facts; provided, however, that the person applying for said duplicate license shall pay a fee of ten dollars ($10.00) for said duplicate.

ARTICLE VIII: TEMPORARY CLOSING

In the course of operation a licensed premises should any violations of the ordinance or other statutes or ordinances of a public disorder nature, including but not limited to those described under KRS 244.120 (Retail premises not to be disorderly - Acts constituting disorderly behavior) be reported and investigated by the local law enforcement and in the event such action requires closure of the establishment, it shall be reported to the County ABC Administrator.

The County ABC Administrator may, in the interest of public health, safety, morals and welfare, direct local law enforcement to temporarily suspend the license in question for the remaining hours of the day in question by locking the premises after dispensing the patrons. The temporary suspension shall remain in effect until review of the alleged violations by the County ABC Administrator or designee; such review shall occur within the next three (3) business days.

ARTICLE IX: COMPLIANCE WITH OTHER ORDINANCES AND REGULATIONS

No license shall be issued or renewed to any person for selling at retail or wholesale any alcoholic beverages at any premises or location where such business or associated activities are prohibited under Kentucky law, or are in violation or conflict with any regulation, including but not limited to signs, fire prevention and/or the zoning code and regulations of Oldham County or any of the incorporated cities within Oldham County which do not have their own ABC Administrator and any ordinance supplementary or amendatory to it, and any license issued in violation of this section shall be void.

ARTCLE X: REVOCATION OR SUSPENSION

Any license may be revoked or suspended by the County ABC Administrator if the licensee shall have violated any of the provisions of Kentucky Revised Statutes Chapters 241, 243, or 244, or any rule or regulation of the manufacture, sale and transportation or taxation of alcoholic beverages, or if such licensee shall have violated or shall violate any act of congress or any rule or regulation of any federal board, agency or commission. Or, this ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors terms of Kentucky Revised Statutes Chapters 241, 243, and 244 to be created, referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his/her instructions, or any such license may be revoked or suspended for any cause which the County ABC Administrator in the exercise of his/her sound discretions deems sufficient.

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

Any license may be revoked or suspended for the following causes:

1) Conviction of the licensee or his/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 (2) consecutive years, any licensee or any of his/her clerks, servants, agents or employees of the licensee shall have been convicted of two (2) violations of the terms and provision of KRS Chapters 241, 243, and 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 licenses shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one (1) such felony and one (1) such misdemeanor.

4) Willful and deliberate failure or defaults of a licensee to pay appropriate regulatory fees and/or other county obligations or any part thereof, or any penalties imposed by or under the provisions of any statutes, this ordinance or acts of congress relative to taxation, or for a violation of any rules or regulations of the Department of Revenue made in pursuance thereof.

5) Revocation of any license granted under any act of congress relative to the regulation of manufacture, sale and transportation of alcoholic beverages. Any license must be revoked or suspended in the case of sale of alcoholic beverages by the licensee at a price in excess of the price set by federal or state regulations.

ARTICLE XI: PATIO AND OUTDOOR SALES

(a) Patio and outdoor sales of alcoholic beverages shall be permitted only on premises licensed for sales of alcoholic beverages by the drink.

(b) No licensee shall offer alcoholic beverages for sale in a patio or outdoor area of the licensee's premises except in a clearly defined patio or outdoor area. All outdoor areas shall be subject to the approval of the County ABC Administrator. An exception to this restriction may be granted for patio and outdoor sales, upon application to and authorization from the County ABC Administrator. The permission to operate patio and outdoor sales shall be governed by the provisions of this article and shall be subject to the regulation of local zoning authorities as well as code enforcement and public safety officers.

(c) No licensee shall offer patio or outdoor sales of alcoholic beverages unless the patio or outdoor area has been approved in advance by the County ABC Administrator.

(d) Patio and outdoor sales seating areas must comply with this ordinance and with local zoning laws and other public safety requirements noted in this ordinance, or in other local ordinances, statutes or regulations.

ARTICLE XII: CONDITIONS FOR SIDEWALK CAFÉ PERMIT

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

The issuance of a permit shall be subject to the following conditions and restrictions:

a) No sidewalk café shall be permitted in any portion of the public sidewalk where normal pedestrian traffic flow is obstructed. A minimum clearance width of thirty-six (36) inches must be maintained on the public sidewalk at all times. The sidewalk café shall not be permitted in any manner to obstruct the entrance/exit to the restaurant or encroach on any adjoining business.

(b) No tables, chairs or any other furnishings, except plant tubs, shall be placed in the area used for the sidewalk café during any period when the sidewalk café is not open and being operated. Tables, chairs, and other portable appurtenances shall be confined to the area named or shown on the approved Permit. While such café is in operation, all tables and chairs shall be kept in a clean, sanitary condition.

(c) The use of a portion of the public sidewalk as a sidewalk café shall not be an exclusive use. All public improvements, including but not limited to, trees, light poles, traffic signals, pull boxes or manholes, or any public-initiated maintenance procedures, shall take precedence over said use of the public sidewalk at all times.

(d) The licensee shall, in addition to all other requirements of law, take reasonable steps to insure that alcoholic beverages are consumed only by patrons of the establishment who are of age, and not by passers-by or persons who are not of age or who are obviously or apparently intoxicated.

(e) No disposable cups or drinking vessels may be used and the licensee shall not permit any alcoholic beverages to be taken off premises by patrons, customers or guests.

(f) At no time shall any music originating from any part of the premises create a nuisance;

(g) The licensee must at all times comply with all federal, state and local laws regarding the sale, service and consumption of alcohol and the operation of the premises;

(h) The permit for a sidewalk café may not be assigned or transferred.

(i) No sidewalk café permit shall be effective unless the licensee has filed with the County ABC Administrator evidence of insurance, insuring the licensee against liability imposed by law arising out of the ownership, maintenance or operation of such sidewalk café. The insurance shall be in an amount of coverage that is a minimum of $500,000 per person for bodily injury, and a minimum of $1 million per occurrence for property damage. The county shall be named an additional insured in the policy required. Such insurance policy shall further provide expressly that it may not be canceled except upon ten (10) day's written notice filed with the County ABC Administrator.

ARTICLE XIII: SPECIAL TEMPORARY LICENSE FOR QUALIFING EVENT ACTIVITIES PERMITTED AND PROHIBITED

(1) A special temporary license may be issued in a wet territory to any regularly organized fair, exposition, racing association, or other party, when in the opinion of the board a necessity therefore exists. This license shall authorize the licensee to exercise the privileges of a quota retail drink license and an NQ4 retail malt beverage drink license at designated premises for a specified and limited time, not to exceed thirty (30) days, and shall expire when the qualifying event ends. All restrictions and prohibitions applying to a distilled spirits and wine quota retail drink license or an NQ4 retail malt beverage drink license shall apply also to a special temporary license.

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

(3) The holder of a special temporary license may sell, serve, and deliver distilled spirits, wine, or malt beverages by the drink, for consumption at the event only in:

(a) Those cities and counties where quota retail drink licenses are authorized to be issued under KRS 243.230:

(b) A city approving retail distilled spirits and wine sales under KRS 242.127 and 242.129; or

(c) A city or county that has enacted an economic hardship ordinance under KRS 243.072.

ARTICLE XIV: SOUVENIR PACKAGE SALES BY LICENSED DISTILLERS

(1) Any licensed Kentucky distiller that is located in wet territory and that has a gift shop or other retail outlet on its premises may conduct the activities permitted under this section as a part of its distiller's license.

(2) A wholesaler registered to distribute the brands of any distiller may permit the distiller to deliver a souvenir package directly from the distillery proper to the portion of the distillery premises operated by the licensee for the sale of souvenir packages. However, all direct shipments shall be invoiced from the distiller to the wholesaler and from the wholesaler to the distiller, and all products directly shipped shall be included in the wholesaler's inventory and depletions for purposes of tax collections imposed pursuant to KRS 243.710 to 243.895 and 243.990.

(3) A distiller may sell souvenir packages at retail to distillery visitors of legal drinking age, in quantities not to exceed an aggregate of three (3) liters per visitor per day, with the exception of a purchase by a partnership, limited liability partnership, corporation, limited liability company, or other business entity holding an event on the premises of the distillery, in which case the limitation shall be one (1) liter per visitor attending the event. These sales shall be permitted only through the gift shop or other retail outlet on the distiller's premises.

(4) Hours of sale for souvenir packages at retail shall be 9 a.m. until 9 p.m. prevailing time Monday through Saturday; and 12 p.m. until 9 p.m. Sunday. The licensed premises may remain open if it has a separate department pursuant to KRS 244.290(1).

(5) Except as provided in this section, souvenir package sales shall be governed by all the statutes and administrative regulations governing the retail sale of distilled spirits by the package.

(6) No wholesaler may restrict the sale of souvenir packages to the distiller of origin exclusively, but shall make souvenir packages available to any Kentucky retail licensee licensed for the sale of distilled spirits by the package pursuant to KRS 243.0305

ARTICLE XV: MALT BEVERAGE KEG REGISTRATION

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

(2) All retail licensees (herein referred to as "licensee") operating within the jurisdiction of Oldham County Fiscal Court who sell malt beverages in kegs for consumption off the premises of the licensee shall attach a control label. The label must have a control number, and the name of the business. Each label must be affixed to each keg at the time of sale and shall require the purchaser to complete and sign a keg registration form for the keg stating the following:

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

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

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

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

(6) The County ABC Administrator is authorized to develop appropriate rules and regulation and to develop and make available forms for the identification label and keg registration forms.

(7) All licensees that sell or offer for sale kegs shall post on the licensed premises a notice provided by the County ABC Administrator concerning the provisions of this ordinance.

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

ARTICLE XVI: CONDITIONS GOVERNING LICENSES

All licenses granted under this chapter shall be granted subject to the following conditions, and all other conditions of other ordinances and regulations applicable thereto.

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

(2) It shall be unlawful for any licensee under this chapter to sell, keep or permit to be sold, or kept on the licensed premises any controlled substances as defined in KRS Chapter 218A, except at a licensed pharmacy. In addition to other penalties set out in this chapter for the violation of this section the County ABC Administrator shall also have the authority to revoke the license issued to the premises.

(3) It shall be unlawful for any licensee, or any employee of any licensee, to permit or allow acts of prostitution, gambling or the possession of any gambling device on the licensed premises, unless the gambling activity is licensed by the Kentucky Lottery, the Kentucky Racing Commission for pari-mutuel betting, or the Office of Charitable Gaming.

(4) It shall be unlawful for any licensee, or employee of any licensee, to allow the premises to become over-crowded or violate any ordinance or regulation of the principal fire department serving the district wherein the license is held.

ARTICLE XVII: NOTICE TO SURRENDER LICENSE; HEARING

Within three (3) days after any order of revocation of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section.

Upon receiving notice of revocation, the licensee shall at once surrender his/her license to the County ABC Administrator. If the revoked license is not forthwith surrendered by the licensee, the County ABC Administrator shall immediately ask local law enforcement officers to take physical possession of the license and return it to the County ABC Administrator.

When a license has been revoked the former licensee may, with prior approval of the County ABC Administrator, dispose of and transfer the licensee's stock of alcoholic beverages to an appropriate entity.

Appeals from the decision of the County ABC Administrator shall be made to the state ABC Board.

If a license is revoked or suspended by an order of the County ABC Administrator, the licensee shall at once suspend all operations authorized under their license.

ARTICLED XVIII: TRANSFER OR ASSIGNMENT

No license issued under this ordinance shall be transferred or assigned either as to licensee or location except with prior approval of the County ABC Administrator and not then until a payment of one hundred dollars ($100.00) shall be made to the County ABC Administrator.

ARTICLE XIX: REFUSAL OF LICENSE

The County 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 county 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 county ordinance regarding alcoholic beverage licensing, sales or the administration thereof.
(b) If the applicant has done any act for which a revocation of license would be authorized; or
(c) If the applicant has made any false material statement in their application.

A license (new issuance, transfer or renewal) may be refused by the County ABC Administrator for any reason which he or she, in the exercise of their sound discretion, may deem sufficient.

ARTICLE XX: REVIEW OF LICENSE

Applicants for whom a food sales requirement exists shall provide periodic information demonstrating compliance with the continuing percentage requirement that is earned from the sale of food.

This documentation shall be provided quarterly for the applicants first year, semiannually for the second year, and annually thereafter provided that the applicant stays in compliance, and shall be submitted with the applicant's quarterly regulatory fee filings. This information shall consist of a certificate from a Certified Public Accountant familiar with the applicant's pertinent business records. This certificate shall state:

> **"I have conducted a limited scope audit according to accepted accounting principles of the pertinent records of (company) Licensee Number_____under Ordinance No._____,**
>
> **I hereby certify that the Licensee earned the minimum food sales requirement stipulated in License Number_____for the quarter ending _____**
>
> **(MINIMUM FOOD SALES REQUIREMENT IS 50%)**
>
> **The Licensee derived_____% of its gross sales from food and_____% of its gross receipts from the sale of alcohol."**

This certificate shall include a brief description of the methodology utilized in the determination of the certified percentage.

In the event the food requirement percentage is not met during any particular quarter, the County 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 County ABC Administrator may apply an accounting period of at least one (1) year in determining whether or not the minimum food requirement has been met.

ARTICLE XXI: REGULATORY LICENSE FEE

(1) Pursuant to KRS 243.075, there is hereby imposed a license fee and a regulatory fee on the gross receipts of sale of alcoholic beverages of each license issued by the ABC Administrator.

Said license fee and regulatory fee shall be set by Resolution of Oldham County Fiscal Court and be available from the County ABC Administrator.

The regulatory fee shall be established to generate revenue that does not exceed the total of the reasonable expenses actually incurred by the County in the previous fiscal year for the cost of administration of this ordinance, substance abuse education and additional policing.

Should Fiscal Court fail to address the regulatory fee in any year, then the fee shall remain at the level at which it was last fixed.

(2) Payment of such regulatory fee shall be remitted to the County ABC Administrator, who shall transmit fees upon collection to the County Treasurer, to be held in a separate account maintained for the purpose of fully reimbursing the county for the estimated cost of regulatory and administrative fees, substance abuse education and any additional policing, related to the sale of alcoholic beverages in the county.

(3) The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, except that a quarterly credit of 25% against the annual regulatory license fee in the county shall be allowed, pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the tax return approved for such use by the county. The return and payment are due no later than by the end of the month immediately following each calendar quarter (July 1 to September 30; October 1 to December 31; January 1 to March 31; April 1 to June 30).

(4) Failure to pay such quarterly remittance within ten (10) days of the due date constitutes a violation and subjects the licensee to suspension or revocation. A civil action may be filed by the county to collect the unpaid fee, penalties, and interest. If such a civil action is filed, the licensee shall be responsible for the expense of attorney fees and the costs associated with prosecuting the civil action.

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

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

ARTICLE XXII: CHANGE OF INFORMATION

(1) Since licenses issued by the county may be in the name of a corporation, it is necessary that stock ownership changes in such corporation be reported to the County ABC Administrator. The County 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.

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

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

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

ARTICLE XXIII: DORMANCY

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

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

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

(4) All renewal licenses must be on file with the County ABC Administrator within thirty (30) days prior to the expiration of the licenses for the preceding license period or the same shall be cancelled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license period due to construction, an act of God, casualty, death, the acquisition or threatened acquisition of these premises by any federal, state, county or other governmental agency or private corporation possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; that said licensee shall file a written verified statement no less than twenty (20) days from the expiration date of the license, setting forth these facts, and the County 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 County 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.

ARTICLE XXIV: APPROVAL OF PREMISES

The County ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until said applicant and place proposed for business shall comply with all applicable Building Codes.

A license will not be issued by the County ABC Administrator unless there exists at least one hundred (100') feet between the front door of a licensee and the front door of a school, church, daycare, or nursery. The County ABC Administrator has the authority to waive this distance requirement.

ARTICLE XXV: DELINQUENT TAXES OR FEES

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

Further, if a licensee becomes delinquent in the payment of any taxes, liens, or any other obligation to any Oldham County public agency at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension.

ARTICLE XXVI: BOOKS, RECORDS AND REPORTS

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

For the purpose of assisting the County ABC Administrator in enforcement of this ordinance, every licensee required to report to the ABC Board under KRS 243.850 shall provide a copy of such report to the County ABC Administrator. Copies of any and all reports and correspondence to the County ABC Administrator required by statute shall be furnished to the County ABC Administrator.

ARTICLE XXVII: HOURS FOR SALE AND DELIVERY

(1) The licensee shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages by the drink Monday through Saturday between the hours of 8:00 am and midnight and on Sunday between noon and midnight.

(2) All delivery of distilled spirits, wine and/or malt beverages in the County shall be made during normal business hours, Monday through Saturday. No delivery shall occur on Sunday.

(3) The licensee shall be permitted according to KRS 244.290 to sell or dispense any distilled spirits, wine and/or malt beverages during the hours that the polls are open on any regular or primary election day. Note: KRS 244.290 amended June 25, 2013, permitting sales.

The licensee may sell and dispense distilled spirits, wine and/or malt beverages on New Year's Eve until 2:00 a.m. on January 1, regardless of the day of the week on which New Year's Eve occurs.

If New Year's Eve falls on a Sunday, distilled spirits, wine and/or malt beverages may be sold and dispensed commencing at Noon; if New Year's Day falls on a Sunday, then distilled spirits, wine and/or malt beverages may be sold and dispensed until 2:00 a.m. on January 1.

ARTICLE XXVIII: CONDITIONS, PROHIBITIONS AND RESTRICTIONS

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

(2) 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.

(3) No licensee shall sponsor, offer or permit drinking contests, all-you-can-drink specials or free drinks on any licensed premise in the county.

(4) It shall be unlawful for any licensee licensed under this ordinance to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from any law enforcement agency in Oldham County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, local law enforcement or the County ABC Administrator, or the Administrator's designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

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

(6) It shall be unlawful for the licensee under this ordinance who sells alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in direct connection with the sale of alcoholic beverages.

(7) 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.

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

(9) The licensee shall display at all times in a prominent place a sign at least eight inches by eleven inches (8" x 11") in 30 point or larger type which states as follows:

(a) Persons under the age of twenty-one (21) are subject to a fine of up to the maximum allowed by state law if they:

(b) Enter licensed premises to buy, or have served to them alcoholic beverages.

(c) Possess, purchase or attempt to purchase, or get another to purchase alcoholic beverages.

(d) Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.

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

(11) The licensee shall post in a prominent place easily seen by patrons a printed sign at least eleven inches by fourteen inches (11" x 14") in size, with letters at least one inch (1") high, supplied by the Alcoholic Beverage Control Board, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.

A person who violates this shall be subject to a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) per KRS 243.895.

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

(13) No wholesaler or distributor shall sell any alcoholic beverages to any person in the County for any consideration except under the usual credit or cash terms of the wholesaler or distributor at or before the time of delivery. Nor shall any retail licensee sell to purchaser for any consideration other than cash or usual credit at time of purchase.

(14) No licensee shall knowingly employ in connection with the business any person who:

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

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

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

(D) Within two (2) years prior to the date of his employment has had any County license under this ordinance revoked for cause.

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

ARTICLE XXIX: ENFORCEMENT

Local law enforcement officers and the County ABC Administrator are authorized to enforce this ordinance for alleged violations.

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

Penalties:
The following penalties shall be in addition to any criminal prosecution instituted in Oldham County District Court against an alleged violator and fines hereunder shall be payable to the County ABC Administrator.

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

Any person, firm or corporation who violates any of the provisions of this ordinance, for which no other penalty is hereby provided, shall, for the first offense, be fined not less than one hundred dollars ($100.00) or imprisoned in the county jail for not more than six (6) months, or both, and for the second and each subsequent violation shall be fined not less than two hundred dollars ($200.00) or imprisoned in the county jail for not more than six (6) months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, joint stock company, association or fiduciary, the principal officer of officers responsible for the violation may be imprisoned.

ARTICLE XXX: MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

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

Persons required to complete training shall complete that training within ninety (90) 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 County not less than once every three (3) years thereafter.

The manager of the restaurant shall be responsible for compliance with the training requirements and shall maintain for inspection by the County ABC Administrator a record or file on each employee that shall contain the pertinent training information.

ARTICLE XXXI: PRODUCT SIGNS AND ADVERTISING

(1) All signage shall be in compliance with any and all other existing rules and regulations of Oldham County and the Oldham County Comprehensive Zoning Ordinance, except as otherwise noted below.

(2) Window signs, either temporary or permanent, shall not exceed 20% of each window area. State ABC mandated licenses and notices are excluded from the 20% calculation.

(3) No flashing lights or signs shall be used to illuminate the exterior of any premises licensed under this chapter. Product advertisement is not allowed on any free standing sign.

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

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

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

(7) No licensee shall advertise distilled spirits, wine, and/or malt beverages by trade name, trade-mark or in any other manner within one hundred feet (100') of the property line of any school daycare, nursery or church. The distance shall be a straight line. The County ABC Administrator has the right to waive this prohibition.

ARTICLE XXXII: INFORMATION DEEMED CONFIDENTIAL

Any information, including returns, documents, or payments made pursuant hereto and any other information gained by the County ABC Administrator or any other official, agent, or employee of Oldham County Fiscal Court as a result of any return, investigation, hearing or verification required or authorized by the ordinance shall be confidential; except, in accordance with proper judicial order, and any person or agent divulging such information shall, upon conviction, be subject to a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) or imprisonment not to exceed thirty (30) days, or both, at the discretion of the court. Provided, however, such person may disclose to the Commissioner of the Revenue Cabinet of the State or their duly authorized agent, or the Commissioner of Internal Revenue Service, or their duly authorized agent, all such information and extend the right to inspect any of the books and records of Oldham County to said Commissioner of the Revenue Cabinet of the State and/or to said Commissioner of the Internal Revenue Service who must grant to the County the reciprocal right to obtain information from the files and records of the Internal Revenue Service and maintain the privileged character of the information so furnished to them.

ARTICLE XXXIII: IMPLEMENTATION OF ORDINANCE PROVISIONS

From time to time the Oldham County Fiscal Court may by resolution or order promulgate such rules and regulations and may publish and utilize such forms and other documents as in its discretion may be necessary for the proper implementation of this ordinance.

SEVERABILITLY

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

EFFECTIVE DATE

This ordinance shall become effective upon its passage and advertisement according to law.

Signed this 16th day of February, 2016.

_____
DAVID VOEGELE
Oldham County Judge/Executive

ATTEST:

_____
SHEILA FAEHR
Oldham County Fiscal Court Clerk

COMMONWEALTH OF KENTUCKY
OLDHAM COUNTY FISCAL COURT
RESOLUTION NO. 03-02-02-16

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WHEREAS, Oldham County Fiscal Court adopted ORDINANCE NO. KOC 16-410-76 relating to the sale of alcoholic beverages in Oldham County.

WHEREAS, ARTICLE XXI of such Ordinance regarding a REGULATORY LICENSE FEE states as follows:
(1) Pursuant to KRS 243.075, there is hereby imposed a license fee and a regulatory fee on the gross receipts of sale of alcoholic beverages of each license issued by the ABC Administrator. Said license fee and regulatory fee shall be set by Resolution of Oldham County Fiscal Court and be available from the County ABC Administrator.

NOW, THEREFORE, BE IT RESOLVED that Oldham County Fiscal Court hereby sets a license fee for the sale of alcoholic beverages as follows:

	License Type	Fee	Renewal	Half Year
1	Quota Retail Package License	$600	$600	$300
2	Quota Retail Drink License BAR	$600	$600	$300
3	NQ-2 Retail Drink License	$1,000	$1,000	$500
4	NQ-3 Retail Drink License	$300	$300	$150
5	NQ-4 Retail Malt Beverage Drink License	$200	$200	$100
6	Secondary NQ Malt Beverage "Retail Package" License	$50	$50	$25
7	NQ-Retail Malt Beverage Package License	$200	$200	$100
8	Secondary NQ Malt Beverage "Retail Drink" License	$50	$50	$25
9	Special Temporary License	$100	$100	
10	Limited Restaurant License	$800	$800	$400
11	Limited Golf Course License	$720	$720	$360
12	Special Sunday Drink License	$10	$10	$5

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.

FURTHER, BE IT RESOLVED, that Oldham County Fiscal Court hereby sets a regulatory fee on the gross receipts of the sale of alcoholic beverages of each license issued by the ABC

Administrator as follows:

The regulatory license fee shall be five percent (5%) of gross sales of all alcoholic beverages sold by the drink, paid quarterly.

The regulatory license fee shall be five percent (5%) of gross sales for all retail package distilled spirits and wine, paid quarterly.

The regulatory license fee shall be five percent (5%) on gross retail sales of package malt beverages, paid quarterly.

Approved and adopted at a regular meeting of the Oldham County Fiscal Court on the 16th day of February, 2016.

_____
David Voegele
Oldham County Judge-Executive

ATTEST:

_____
Sheila Faehr
Oldham County Fiscal Court Clerk