

CITY OF ELKTON, KENTUCKY
ORDINANCE NO. 2019- 12

AN ORDINANCE ADOPTING REGULATIONS AND REQUIREMENTS FOR ALCOHOL BEVERAGE CONTROL WITHIN THE TERRITORIAL LIMITS OF THE CITY OF ELKTON, KENTUCKY AND FURTHER ADOPTING ALL APPLICABLE AND REQUIRED KENTUCKY REVISED STATUTES INCLUDING BUT NOT LIMITED TO KRS CHAPTERS 241 THROUGH 244

WHEREAS, a local option election was held on May 21, 2019, the results of which legalized the sale of alcoholic beverages within the territorial limits of the City of Elkton, Kentucky; and

WHEREAS, it is therefore now incumbent upon the City to adopt an ordinance regulating the sale of alcohol within the City; and

WHEREAS, to establish such uniform regulations and requirements for the licensing and regulation of alcoholic beverages pursuant to and consistent with the authorization provided by Kentucky Revised Statutes Chapters 241 through 244, and all other applicable law;

NOW THEREFORE, be it ordained by the City Council of the City of Elkton, Kentucky that the following regulations and requirements are hereby adopted as set forth below:

SECTION ONE

ARTICLE I. GENERAL

- A. This chapter shall be known as "Alcoholic Beverage Control Ordinance" of the City of Elkton, Kentucky (hereinafter referred to as the "City").
- B. The purpose of this chapter is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage manufacture and sales pursuant to authorization under KRS Chapters 241 through 244.
- C. The definitions of the words used throughout this chapter, unless the context requires otherwise, shall have the same meaning as those set out in the alcoholic beverage control laws (KRS Chapters 241 through 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.
- D. This Ordinance shall be construed to apply to the manufacture and traffic in both malt beverages and distilled spirits and wine where the context permits such application. Nothing in this chapter shall excuse or relieve the licensee, or the owner, proprietor, employee, agent or person in charge of any licensed premises where alcoholic beverages are sold from the restrictions, requirements and penalties of any other ordinance of the City, or of any statutes of the state relating to violations pertaining to alcoholic beverages.
- E. The provisions of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky (KRS Chapters 241 through 244) and all amendments and supplements thereto and the regulations adopted pursuant thereto, are adopted so far as applicable to this chapter except as otherwise lawfully provided herein.

ARTICLE II. LICENSE REQUIREMENTS

A. City Licenses

For the privilege of causing, permitting and engaging in the actions, business, and transactions authorized thereby in regard to traffic in alcoholic beverages in the City and pursuant to the authority of KRS 243.070, there is hereby established a corresponding City license for each of the state licenses described in KRS 243.070. The fee for each city license shall be as set out in the schedule set forth below. In the event KRS 243.070 shall hereafter be amended to authorize additional City licenses, the fee for each City license shall be the maximum fee provided in the statute as amended.

1. Distiller's license, per annum	\$500.00
2. Rectifier's license	
(a) Class A, per annum	\$3,000.00
(b) Class B (craft rectifier), per annum	\$960.00
3. Wholesaler's license, per annum	\$3,000.00
4. Quota retail package license, per annum	\$1,000.00
5. Quota retail drink license, per annum	\$1,000.00
6. Non-quota Type 1 retail drink license, per annum	\$2,000.00
7. Non-quota Type 2 retail drink license, per annum	\$1,000.00
8. Non-quota Type 3 retail drink license, per annum	\$300.00
9. Special temporary license, per event	\$166.00
10. Special temporary alcohol auction license, per event	\$200.00
11. Special Sunday retail drink license, per annum	\$300.00
12. Extended hours supplement license, per annum	\$2,000.00
13. Caterer's license, per annum	\$800.00
14. Bottling house or bottling house storage license, per annum	\$1,000.00
15. Brewer's license, per annum	\$500.00
16. Microbrewery license, per annum	\$500.00
17. Malt beverage distributor's license, per annum	\$400.00
18. Non-quota retail malt beverage package license, per annum	\$200.00
19. Non-quota Type 4 retail malt beverage drink license, per annum	\$200.00

20. Limited restaurant license, per annum	\$1,200.00
21. Limited golf course license, per annum	\$1,200.00
22. Authorized public consumption license, per annum	\$250.00
23. Qualified historic site license, per annum	\$1,030.00

B. The fee for each of the first five 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 to the same licensee at the same premises.

C. The holder of a nonquota retail malt beverage package license may obtain a Nonquota type 4 malt beverage drink license for a fee of \$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 \$50.

D. Certain Special Licenses Defined:

1. "LIMITED RESTAURANT LICENSE." A Limited Restaurant License may be issued pursuant to KRS Chapter 243, if said restaurant meets the definition of a "LIMITED RESTAURANT" as set forth in KRS 241.010(35) it is a facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least 70% of its gross income from the sale of food, and which maintains seating capacity of either 100 or 50 persons for dining. If the limited restaurant only maintains seating capacity for 50 persons, it shall not have open bar and all alcoholic beverages shall be sold in conjunction with the sale of a meal. Distilled spirits, wine, and malt beverages shall be deemed to be purchased in conjunction with a meal if the distilled spirits, wine, and malt beverages are served after the meal is ordered and no more than one-half hour after the meal is completed.

2. "LIMITED GOLF COURSE LICENSE." A Limited Golf Course License may be issued pursuant to KRS Chapter 243 if an establishment meets the following conditions: a golf course with nine or 18 holes that meets United States Golf Association criteria as a regulation golf course. A limited golf course license shall authorize the license to purchase, receive, possess, and sell distilled spirits, wine, and malt beverages at retail by the drink for consumption on the licensed premise. KRS 243.039.

3. "NON-QUOTA TYPE 1 RETAIL DRINK LICENSE." A Non-quota Type 1 Retail Drink License may be issued to, and including the following as defined by KRS to: a convention center or a convention hotel complex; a horse racetrack; an automobile racetrack; a railroad system; a commercial airlines system or charter flight system, a qualified historic site, and a state park. KRS 243.082.

4. "NON-QUOTA TYPE 2 RETAIL DRINK LICENSE." A Non-quota Type 2 Retail Drink License may be issued pursuant to and as defined by KRS to the following: (a) a hotel that contains at least 50 sleeping units, contains minimum dining seating for at least 50 persons, and which maintains 50% of its gross food and drinks sales are from the sale of food; (b) a restaurant that contains minimum dining seating for at least 50 persons, and which maintains 50% of its gross food and drinks sales are from the sale of food; (c) an airport; or (d) a riverboat. KRS 243.084.

5. "NON-QUOTA TYPE 3 RETAIL DRINK LICENSE." A Non-quota Type 3 Retail Drink

License may be issued pursuant to and defined by KRS to the following: (a) a private club in existence for longer than one year prior to the license application and which excludes the general public; (b) a dining car, (c) a distiller, and (d) a bed and breakfast. KRS 243.086.

6. "NON-QUOTA TYPE 4 RETAIL MALT BEVERAGE DRINK LICENSE." A Non-quota Type 4 Retail Malt Beverage Drink License may be issued pursuant to and as defined in KRS to the following: a holder of a quota retail drink license; a holder of a microbrewery license; a holder of a small farm winery license; and any other business wishing to sell malt beverages by the drink for consumption on the premises only. A non-quota retail malt beverage drink license shall not be issued to any premises from which gasoline and lubricating oil are sold, or from which the servicing and repair of motor vehicles is conducted, unless there is maintained in inventory for sale on the premises at retail not less than \$5,000 of food, groceries, and related products valued at cost. KRS 243.088.

7. "SPECIAL TEMPORARY LICENSE." A Special Temporary License may be issued only as set forth in KRS 243.260 and 804 KAR 4:250. Such a license may be issued to any regularly organized fair, exposition, racing association, organized civic or community-sponsored event, or charitable event as defined by applicable law. This license shall authorize the licensee to exercise the privileges of a quota retail drink licensee and a non-quota Type 4 malt beverage drink licensee at designated premises for a specified and limited time, which shall not exceed 30 days and which shall expire when the qualifying event ends. All restrictions and prohibitions applying to a distilled spirits and wine quota retail drink license or a non-quota retail malt beverage drink license shall apply also to a special temporary licensee as described in this section.

8. "AUTHORIZED PUBLIC CONSUMPTION LICENSE." An Authorized Public Consumption Ordinance may be issued only as set forth in KRS 243.089 and only if authorized by separate ordinance of the City of Elkton.

E. Expiration of License; Proration of Fees

All City licenses, except temporary licenses, shall begin on May 1 of any year and shall expire on April 30 of the following year as set forth in KRS 243.090 and 804 KAR 4:390. Any licenses issued after November 1 (six months from normal license begin date) of any year shall be assessed a fee which is one half the amount of the full fee for an annual license of that type.

F. Payment of License Fees; Delinquency

No licensee shall enter into or begin operating any business for which a license is required by this chapter until the license fee has been paid in full. The fee for renewal of any license shall be paid with the renewal application. Failure to pay any license fee within ten days after it becomes due shall result in a penalty equal to 10% of the license fee. Any licensee failing to pay the fees, including penalties, within ten days after such fees are due may be subject to revocation of the license and to other penalties as provided in this chapter.

G. Refund of Fees

1. Should any licensee under this chapter be prohibited from conducting the licensed business for the full period covered by the license because of any changes that may hereafter be made in the laws of the Commonwealth with reference to alcoholic beverages or other cause outside licensee's control, then the city shall refund to licensee the proportionate part of the license fee for the period during which licensee is prevented from carrying on said business if the licensee

provides sufficient proof to the City ABC Administrator that such period of inactivity was not the fault of the licensee or the result of a revocation, suspension or other wrongdoing by licensee, or an agent or employee of the licensee.

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

H. Regulatory License Fee

1. Pursuant to KRS 243.075, there is hereby imposed a Regulatory License Fee on the gross receipts of sale of alcoholic beverages of each licensee who has a local license issued by the City ABC Administrator. The City's Regulatory License Fee shall be Five percent (5%) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distill spirits and wine, the Regulatory License Fee shall be Five percent (5%) of gross sales. The Regulatory License Fee shall be Five percent (5%) on gross retail sales of package malt beverages.

2. Payment of said regulatory fee shall be remitted to the City ABC Administrator, who shall transmit all fees to the City Clerk, or his designee, for deposit into the appropriate designated account. The City may use said fees as permitted by law, including but not limited to, any cost of additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other fees or licenses permitted by law, except that a credit against a regulatory license fee in the City shall be allowed in an amount equal to any license fee required herein. Payment of the regulatory license fee shall accompany the fee returns approved for such use by the City. Said returns and payments shall be due by the end of each calendar month unless scheduled otherwise by the City ABC Administrator.

3. Failure to remit payment within ten (10) calendar days of the due date constitutes a violation and shall subject a licensee to suspension or revocation of the license.

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

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

I. Disposition of Fees and Any Other Type of Payment to the City

The City ABC Administrator shall transmit all fees and any other types of payment made to the city, upon collection, to the City Clerk, or his/her designee, for deposit into the appropriate designated account.

ARTICLE III. CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

A. Alcoholic Beverage Control Administrator

1. Pursuant to KRS 241.160 and KRS 241.170, there is hereby created the office of the City of Elkton Alcoholic Beverage Control Administrator.

2. The Mayor of the city shall appoint an employee of the city, to serve as the City Alcohol

Beverage Administrator, pursuant to KRS 241.170.

3. The City Alcohol Beverage Administrator may from time to time appoint such additional personnel, such as Alcohol Beverage Control investigator(s), as is necessary to assist him or her in the administration of this chapter.

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

5. To prevent potential conflicts of interests, no person shall be a City ABC Administrator, an investigator, or an employee of the city, under the supervision of the City ABC Administrator, who would be disqualified to be a member of the ABC Board under state law set forth in KRS 241.100.

6. The City ABC Administrator shall have authority delegated by the Mayor, and as authorized under KRS Chapters 241 through 244. The City ABC Administrator, and his investigators, shall have jurisdiction coextensive with the boundaries of the city.

7. The City ABC administrator and his investigators shall have available at all reasonable times for their inspection all books and records required to be maintained by licenses under KRS 244.150 and the City ABC Administrator shall receive copies of all reports submitted by licensee to the State Alcoholic Beverage Control Board.

8. The City ABC Administrator, before entering upon his or her duties, 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 \$1,000. Any employee delegated or assigned to the ABC Administration may also be asked to execute a similar bond in such penal sum as the city deems necessary unless said person is already covered under the city's active bonds as required under KRS in regards to officials and employees of the city.

B. Appeals

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

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

ARTICLE IV. APPLICATION AND MAINTENANCE OF LICENSE

A. Advertisement

Before an application for a license shall be considered, the applicant must publish a notice of its intent to apply for an alcoholic beverage license in a newspaper meeting the requirements of KRS Chapter 424, including the following:

1. The advertisement shall state the name and address of the applicant. It shall state the members of the partnership if the applicant is a partnership, and membership of the LLC if the applicant is an LLC, as well as the name of the business and its address. If the applicant is a corporation, the advertisement shall state the names and addresses of the principal officers and directors of the corporation, as well as the name and address of the corporation itself. All advertisements shall state the location of the premises for which the licenses 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 is provided in KRS 424.170.

B. Form of Application

1. All licenses granted under this chapter shall be approved by the City ABC Administrator. Applications for the issuance of new licenses and for renewals of existing licenses shall be in writing and upon the forms provided by the Kentucky ABC Board and/or the City, both of which may be amended and supplemented from time to time by each respective agency.
2. The application shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought, as required by the Kentucky Revised Statutes, the state ABC Board, and the City, including as follows:
 - (a) Name and address;
 - (b) Nature of interest;
 - (c) Whether or not a citizen of the United States;
 - (d) Date of birth;
 - (e) Date of residence was established in Kentucky, if a resident of Kentucky.
 - (f) Whether or not he or she has any interest in any other license or LLC, corporation, partnership or other business organization holding a license under this chapter;
 - (g) Extent of stock or company ownership;
 - (h) Whether or not he or she has any interest in any license or LLC, corporation, partnership or other business organization holding a license in any other state or province.
3. Each application shall be accompanied by a certified check, cashier check, or money order for the amount of the license fee, less the \$50 application fee.
4. In addition to the above specified information, the applicant shall file, with the application, responses to any additional questions as may be posed or prescribed by the City ABC Administrator.

C. Other Conditions

In addition to any other inquiries, conditions or considerations required or permitted by law:

1. The City ABC Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until the applicant and his or her place of business shall have been approved by a licensed building inspector, and any and all other inspections required by the Kentucky

Building Code or other applicable law;

2. All applicants shall voluntarily submit to a criminal background check and shall sign a waiver allowing the release of this information to the City ABC Administrator;

3. No license to sell alcoholic or malt beverages may be granted or renewed to any person who is delinquent in the payment of any property taxes, both real and personal, any other taxes due to the city, fees of any type, or charges due to any department of the city at the time of issuing the license, nor may any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any of the above delinquent payments due and owing to the city. Further, if a licensee becomes delinquent in the payment of any of the above at any time during the license period, the license to sell alcoholic or malt beverages may be subject to revocation or suspension; and

4. No person, whether applicant for license, or a licensee, shall in any manner attempt to bribe, threaten, unduly influence or intimidate the City ABC Administrator, or any member of the city's staff, or any state ABC Administrator or staff, in any matter in which an application or proposed application for license, or procedure for revocation or suspension is pending before such officer. This division is not intended to stifle expressions of opinion; however, it is intended to make clear that the ABC Administrators are public officials charged with the administration and enforcement of the law, both local and state. Any person applying for a license, or contesting the revocation or suspension of a license, who engages in attempted bribes, threats, attempted undue influence or intimidation of a city or state ABC Administrator or staff shall be disqualified from receiving or retaining a license, in addition to other penalties as provided by law. The procedures for appeals shall apply to disqualifications, revocations or suspensions under this chapter. Nothing in this chapter shall be interpreted to prohibit monetary settlements in lieu of revocation or suspension of license after a final order or revocation or suspension, where this chapter and applicable statutes allow for such payments in settlement.

D. Form of License

All city licenses shall be in such form as may be provided by the ABC Administrator, but at a minimum shall contain:

1. The name and address of the licensee;
2. The number of the license;
3. The type of license;
4. A description by street and number, or otherwise, of the licensed premises;
5. The name and address of the owner of the building in which the licensed premises are located;
6. The expiration date of the license;
7. A statement in substance that the license shall not be a property or vested right and that it may be revoked at any time pursuant to law.

E. Change of Information

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

2. Since a number of licenses issued by the city are in the name of corporations or other business organizations, it is necessary that ownership changes in such organizations be reported

to the City ABC Administrator. The City ABC Administrator can, therefore, investigate the person to whom the ownership or management is transferred in order to ascertain whether that person is precluded by statute from holding an interest in an alcoholic beverage license.

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

4. The following information shall be required concerning any new manager, partner or LLC member, new director, officer, or person securing any interest in alcoholic beverage license:

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

5. This information shall be filed with the City ABC Administrator as a verified amendment of the application pursuant to which the license was granted. Filing shall be made within ten days of any change of required information.

F. Renewal of License

1. Every year, except in the case of the temporary licenses, each licensee shall renew its license. All renewal licenses must be on file with the City ABC Administrator no less than 30 days prior to the expiration of the license for the preceding license period or the same shall be canceled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license period as a result of construction, act of God, casualty, death, the acquisition or threatened acquisition of the premises by any federal, state, city or other governmental agency or private organization possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; provided that said licensee shall file a written verified statement no less than 20 days from the expiration date of the license, setting forth these facts, and the City ABC Administrator is hereby authorized to extend the time for filing of a renewal of such license for a reasonable length of time within the sound discretion of the City ABC Administrator; provided, however, such licensee shall pay a license fee from the expiration date of the former license or licenses. Said license fee shall not be payable until application is made for the transfer of said license to a new location.

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

G. Lost or Destroyed License

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

H. Revocation or Suspension

1. Any license may be revoked or suspended by the City ABC Administrator if the licensee shall have violated any of other provisions of KRS Chapters 241 through 244, or any rule or regulation of the ABC Board, or of the Kentucky Department of Revenue, relating to the regulation of the manufacture, sale, and transportation, or taxation, of alcoholic beverages or if such licensee shall have violated or shall violate any act of Congress or any rule or regulation of any federal board, agency or commission, or this chapter now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale, and transportation, or taxation, of intoxicating liquors, or any rules or regulations of the city heretofore in existence or authorized by the terms of KRS Chapters 241 through 244 to be created, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his or her instructions, or any such license may be revoked or suspended for any cause which the City ABC Administrator in the exercise of his or her sound discretion deems sufficient.

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

3. In addition to the foregoing stated causes, any license may be revoked or suspended for the following causes:

(a) Conviction of the licensee or his or her agent or employee for selling any illegal beverages on the premises licensed.

(b) Making any false, material statements in an application for a license.

(c) If within a period of two consecutive years, any licensee or any clerk, servant, agent or employee of the licensee shall have been convicted of two violations of the terms and provisions of KRS Chapters 241 through 244 or any act heretofore or hereafter in effect relating to the regulation of the manufacture, sale and transportation of alcoholic beverages or if within such period, any licensee or any clerk, servant, agent or employee of the license shall have twice been convicted of any felony or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or of one such felony and one such misdemeanor.

(d) Willful and deliberate failure or default of a licensee to pay an excise tax or any part thereof or any penalties imposed by or under the provisions of any statutes, this chapter, or acts of Congress relative to taxation or for a violation of any rules or regulations of the Kentucky Department of Revenue made in pursuance thereof.

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

I. Proceedings for Revocation or Suspension of License

1. Upon the verified complaint of any person, or on the initiative of any law enforcement officer, or of the City ABC Administrator, the City ABC Administrator may institute

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

2. The specific procedures to be followed in hearings on actions for revocation or suspension shall be those set out in the Kentucky Administrative Procedure Act (KAR Chapter 13B).

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

4. Within three days after any order of revocation or suspension of a license becomes final, notice of revocation shall be given to the licensee and to the owner of the licensed premises. A notice mailed to the licensee and to the owner of the licensed premises at the address shown in the last application for a license or in the last statement supplemental to the application shall be deemed sufficient compliance with this section. The licensee shall at once surrender his or her license to the City ABC Administrator. If the revoked or suspended license is not forthwith surrendered by the licensee, the Chief of Police, at the request of the City ABC Administrator, shall immediately cause one of his or her officers to take physical possession of the license and return it to the City ABC Administrator.

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

6. Appeal from the decision of the City ABC Administrator revoking or suspending a license shall be to the ABC Board within 30 days from the decision of the City ABC Administrator. The timely filing of an appeal shall stay further proceedings for revocation.

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

J. Transfer or Assignment

No license issued under this chapter shall be transferred or assigned either as to licensee or location except with prior approval of the City ABC Administrator and not then until a payment of \$100 shall be made to the City ABC Administrator.

K. Refusal of License; Guidelines for Approval of Quota Licenses

1. The City ABC Administrator may refuse to issue a license for any of the following reasons:

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

beverage licensing, sales or the administration thereof.

(b) If the applicant has done any act for which a revocation of license would be authorized under local, state, or federal law; or

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

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

L. Review of License; Books, Records and Reports

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

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

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

M. Dormancy

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

2. Any license under which no business is transacted during a period of 90 days shall be deemed inactive and, unless the conditions set forth in division (M)(3) below are proved to the satisfaction of the City ABC Administrator, the license shall be surrendered to the City ABC

Administrator. If the license is not voluntarily surrendered, it shall be revoked by the City ABC Administrator.

3. The provisions of division (M)(2) hereof shall not apply to any licensee who is unable to continue in business at the premises for which a license is issued due to construction, an act of God, casualty, death, the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain, whether acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. Prior to the expiration of 90 days of inactivity, such licensee shall furnish to the City ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business, for any of the specific reasons set forth herein, and the City ABC Administrator may grant an extension of the dormancy with the license continuing to remain in effect during the license period or until same is transferred to another premises, notwithstanding the fact that no business is transacted during said period; provided, however, no such license shall be considered valid unless business is conducted there under within 12 months from the date of notice to the City ABC Administrator. Such extension may not extend beyond the renewal date but may be for such times as the City ABC Administrator deems appropriate in exercise of his or her sound discretion.

ARTICLE V. HOURS OF SALE

A. Any premises in the City to which a license for the sale by the drink of malt beverages or distilled spirits or wine has been issued is hereby authorized to remain open for the sale of such beverages until 2:00 a.m.

B. Any premises in the City to which a license for the sale by the drink beverages or distilled spirits or wine has been issued is hereby authorized to remain open until 2:30 a.m. for the sale of soft drinks and other non-alcoholic purposes.

C. Hours of Sale of Sundays

1. Pursuant to the authority of KRS 244.290 and KRS 244.480, no distilled spirits, wine, or malt beverages may be sold at retail, whether by the drink or by package, in the City between the hours of 2:00 a.m. and 6:00 a.m. of any day, including Sundays, and except as otherwise regulated by law, such alcoholic beverages may be sold during all other hours, including on Sundays. Licensees wishing to sell or dispense distilled spirits or wine by the drink on Sunday must obtain a Sunday retail drink license pursuant to KRS 243.050(2).

2. If a separate department of such licensed premises is maintained in a manner previously approved in writing by the ABC Administrator as being capable of being locked, closed off, and separated from the remainder of the licensed premises and all distilled spirits, wine, and malt beverages and all fixtures and apparatus connected with the acts of business and transactions authorized by the licenses for the retail sale of distilled spirits, wine, and malt beverages from such premises are located within such approved department, and such approved department is continuously kept locked, closed off and separated from the remainder of the licensed premises during such times, the remainder of the licensed premises may remain open and any lawful activity may be conducted thereon during such times.

ARTICLE VI. CONDITIONS, PROHIBITIONS AND RESTRICTIONS

A. Gambling

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, quarter pushers, prize redemption machines with programmable payouts, or any device of chance is prohibited and shall not be kept on such premises.

B. Radio Receiving Apparatus

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

C. Security

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

D. Prizes and Premiums Prohibited

It shall be unlawful for a licensee 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 malt beverages unless permitted by KRS 244.500.

E. Treating Prohibited

It shall be unlawful for the licensee under this chapter to give away any alcoholic beverage in any quantity for free or for less than a full monetary consideration unless the licensee holds a sampling license or its license type permits limited free samples (i.e., small farm winery, microbrewery, brewer's) or products are sampled at educational event authorized by 804 KAR 1:110 and 804 KAR 11:030.

F. Drunkenness

No licensee or agent or employee of the licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee sell alcoholic beverages to any person who is actually or apparently under the influence of alcoholic beverages, or known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as many as three times within the most recent 12-month period. No licensee shall permit any person who is actually or apparently under the influence of alcoholic beverages to remain on the licensed premises. As used herein, whether a person is actually or apparently under the influence of alcoholic beverages shall be determined by the licensee or server with specific reference to the principles and guidelines established in mandatory alcohol server training as to the signs of alcohol intoxication.

G. Underage Sales

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

H. Sign Requirements; Notice to Persons Under the Age of Twenty-One

Per state law, the licensee shall display at all times in a prominent place a sign at least 8" x 11" in 30-point or larger type font which states as follows:

"Persons under the age of 21 are subject to a fine of up to \$100 if they:

1. Enter licensed premises to buy, or have served to them, alcoholic beverages;
2. Possess, purchase or attempt to purchase, or get another to purchase alcoholic beverages; or
3. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages."

I. License to be Displayed

1. Pursuant to the requirements set forth in KRS 243.895, the licensee, before commencing any business for which a license has been issued, shall post and display at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

2. The licensee shall post in a prominent place easily seen by patrons a printed sign at least 11" x 14" in size, with letters at least one inch high, supplied by the Department of Alcoholic Beverage Control, and with gender-neutral language supplied by the Kentucky Cabinet for Health and Family Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects. A person who violates this section shall be subject to a fine of not less than \$10, nor more than \$50.

J. Legal Transactions for Wholesalers, Distributors and Retail

No wholesaler or distributor shall sell any alcoholic beverages to any person in the city for any consideration except under cash terms of the wholesaler or distributor at or before the time of delivery. A wholesaler is also permitted to extend credit for 30 days to a retailer for the purchase of distilled spirits and wine. No retail licensee shall sell to a consumer for any consideration except for cash or case equivalent at time of purchase.

K. Employment Restrictions

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

1. Has been convicted of any felony within the last two years unless permitted by KRS 244.090(2);
2. Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two years unless permitted by KRS 244.090(2);
3. Is under the age of 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, unless said person is exempt or permitted by KRS 244.090 or KRS 244.087;
4. Within two years prior to the date of his or her employment, has had any city license under

this chapter revoked for cause.

L. Lavatory Facilities Required

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

M. Nudity and Adult Entertainment Activities Prohibited

No licensee shall offer or permit nudity, adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premise. No licensee shall permit explicit sexual activity, whether actual or simulated, upon any licensed premises.

N. Cause for Revocation

Violation of this and any other section shall subject the licensee to penalties provided in this chapter and shall be cause for revocation or suspension of city licenses.

ARTICLE VII. MINORS

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

B. As provided in KRS 244.085, no person under the age of 21, except in the company of a parent or guardian, may enter any premises licensed for the package sale of alcoholic beverages. No person under the age of 21, may enter any premises licensed for drink sales of alcoholic beverages unless permitted by KRS 244.085(6). For purposes of this prohibition, "premises" specifically encompasses the entire lot upon which a licensed establishment is situated, including any drive-up window. The prohibition contained in this Subsection shall not apply to premises where the usual and customary business of the establishment is a gas station, convenience store, grocery store, drugstore, or similar establishment.

C. No person shall knowingly permit, aid, assist, induce, cause or otherwise encourage any minor to be in possession of, use or consume alcoholic beverages. All licenses, as set out in this chapter, shall require proof of age of all persons attempting to purchase or consume alcoholic beverages on the licensee's premises.

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

E. It shall be a defense to any prosecution under this section if the person charged, upon discovery of said minor individuals, manifests a proper effort to enlist the aid of and cooperate with law enforcement personnel in stopping the minor individuals' possession, consumption or use of alcoholic beverages, or that the minor individuals' possession of alcoholic beverages was exempted by KRS 244.090 or KRS 244.087.

ARTICLE VIII. CONSUMPTION ON PREMISES PROHIBITED

A. Consumption at Package Store Prohibited

1. No licensee of a package store, whether trafficking in distilled spirits, wine or malt beverages, shall permit consumption of alcoholic beverages on the premises unless it also holds the appropriate drink license. The licensee shall post a prominent notice on the premises stating that consumption of alcoholic beverages on premises is prohibited.
2. This restriction regarding on premises consumption shall not prohibit sampling as allowed for microbreweries and wineries under the provisions of KRS Chapter 243, or where sampling is permitted for a retail distilled spirits and wine licensee under the provisions of KRS 244.050, or beer tastings as permitted in 804 KAR 11:030.

B. Habitual Congregating

1. Definitions. In addition to the definitions contained in KRS Chapters 241 through 244, as used in this section, the following terms are defined as follows:

"HABITUAL." Consistent, that is, by frequent practice or use, but not necessarily constant or exclusive.

"PACKAGE LIQUOR STORE." A retail establishment selling distilled spirits, wine and malt beverages in package containers pursuant to licenses issued for those purposes.

"PUBLIC NUISANCE." Any activity that endangers or interferes with the general use and enjoyment of neighboring property, passers-by or the health, safety and welfare of the public.

2. Licensed Premises No person or entity operating a package liquor store, whether trafficking in distilled spirits, wine or malt beverages, including retail package beer licensees, shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of the licensed premises so as to constitute a public nuisance.
3. It shall be a defense to any prosecution under this section if a licensed vendor or property owner maintains a legible, painted or printed sign in at least two separate prominent places in such area, in letters of not less than three inches in height, stating that congregating of persons is prohibited and that violators shall be prosecuted for trespass pursuant to KRS 511.080.

ARTICLE IX. ENFORCEMENT

City police officers and the City ABC Administrator and his/her Investigator(s) are hereby authorized to enforce this chapter in full.

ARTICLE X. SIGNS AND ADVERTISING

- A. All signage shall be in compliance with any and all other existing rules, regulations, and ordinances of the city, including but not limited to, the Planning and Zoning Ordinance as currently enacted, and/or as may be amended in the future.

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

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

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

E. No licensee shall erect or allow to be erected any banner that displays any particular brand of alcoholic beverage on the outside of the building or on the property.

F. Any off premises signage advertising the sale of alcoholic beverages is prohibited. It shall be unlawful to attach signage advertising alcoholic beverages to the exterior of the building or the exterior premises of the business. This prohibition shall include the use of outdoor umbrellas or other outdoor or patio fixtures that feature the name or logo of an alcoholic beverage or manufacturer of alcoholic beverages.

G. Signage which refers directly or indirectly to alcoholic beverages will be limited to one sign not over two square feet that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of displaying advertising which refers either directly or indirectly to alcoholic beverages shall be displayed on, nor shall it be visible from the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business cards not larger than two and one-half inches in size, setting forth the price at which the licensee offers alcoholic beverages for sale.

H. 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.

I. No licensee shall advertise alcoholic beverages on any municipally owned property.

ARTICLE XI. PATIO AND OUTDOOR SALES

A. Patio and Outdoor Sales Regulations

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

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

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

4. Unless exempted by the following provisions of this chapter, and by permission of the City ABC Administrator, patio areas must comply with the screening requirements of this chapter. Sidewalk café seating areas must comply with this chapter and with local zoning laws and other public safety requirements noted in this chapter, or in other local ordinances, statutes or regulations.

B. Exception(s) to Screening Requirements for Outdoor Sales and Service of Alcoholic Beverages, Specifically, Permitted Sidewalk Cafes

1. Licensees may request a permit to use the sidewalk area as an adjunct to the primary and adjacent licensed premises to serve food and alcoholic beverages there. In the case of permitted sidewalk cafes, they shall be deemed part of the licensed premises.

2. Any licensee/restaurant that is licensed under this Ordinance and the provisions of the state ABC laws, may, upon application to the local ABC Administrator, ask permission to expend the operation of the business/restaurant onto a part, and only that part, of the public sidewalk which immediately adjoins the licensed premises (hereinafter referred to as "sidewalk café"). Licensees who do not serve food shall not be eligible to apply for a sidewalk café permit.

C. Conditions for Sidewalk Café Permit

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

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

2. No tables, chairs or any other furnishings, except plant tubs, shall be placed in the area used for the sidewalk café during any period when the sidewalk café is not open and being operated. They shall be removed at the end of each business day at the hour specified in the permit. Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved Permit. While such café is in operation, all tables and chairs shall be kept in a clean, sanitary condition.

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

4. The licensee shall, in addition to all other requirements of law, take reasonable steps to insure that alcoholic beverages are consumed only by patrons of the establishment who are of

age, and not by passersby or persons who are not of age or who are obviously or apparently intoxicated.

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

6. No amplified sound shall be used within a sidewalk café. At no time shall any music originating from any part of the premises create a nuisance.

7. 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.

8. The permit for sidewalk café may not be assigned or transferred.

C. Other Requirements Applicable to Sidewalk Cafes

No sidewalk café permit shall be issued unless the licensee has filed with the City ABC Administrator evidence of insurance, insuring the licensee against the liability imposed by law arising out of the ownership, maintenance or operation of such sidewalk café, in an amount no less than \$250,000.00. The City shall be named an additional insured in the policy and said policy shall further provide expressly that it may not be canceled except upon a minimum of ten (10) day's written notice to the City ABC Administrator.

ARTICLE XII. PENALTIES

A. In addition to any criminal prosecution instituted in TODD District Court against an alleged violator, the City ABC Administrator may assess civil fines in lieu of suspension as authorized in KRS 243.480, including the per diem assessments for ongoing violations. Payment of all fines shall be remitted to the City ABC Administrator, who shall then transmit the fines to the City Clerk for deposit in the appropriate designated account.

B. Any person, firm or corporation who violates any of the provisions of this chapter, for which no other penalty is hereby provided, shall be guilty of a misdemeanor, and subject to prosecution in the Todd District Court, as follows: for the first offense, be fined not less than \$100 nor more than \$500, or imprisoned for not more than six months, or both. The penalties provided for in this subsection shall be in addition to the revocation or suspension of the offender's license. If the offender is a corporation, LLC, joint stock company, association or other business organization, or a fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

SECTION FOUR

If any section, subsection, sentence clause or phrase of this ordinance is held unconstitutional or otherwise invalid, such infirmities shall not affect the validity of the remaining portions of this ordinance.

SECTION FIVE

All ordinances or part of ordinances in conflict with this amendment are hereby repealed.

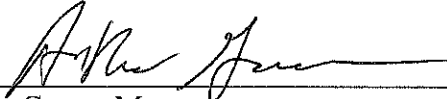
SECTION SIX

This Ordinance shall take effect and be in force from and after its date of passage and publication according to law.

PUBLICLY READ AND PASSED FIRST TIME: June 17, 2019

PUBLICLY READ AND PASSED SECOND TIME: June 18, 2019

APPROVED:



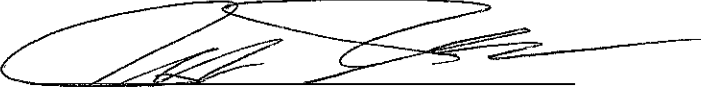
Arthur Green, Mayor

ATTEST:



Laura Brock, City Clerk

Prepared by:



Jeffrey B. Traugher
Attorney at Law
207 E. McReynolds Drive
P.O. Box 129
Elkton, KY 42220

