

ORDINANCE NO. 220.500-12-2004
AN ORDINANCE RELATING TO ALCOHOLIC BEVERAGE CONTROL PURSUANT TO KRS
242.185(6)

WHEREAS, KRS 242.185(6) provides for a local option election on the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat a minimum of one hundred (100) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food; and,

WHEREAS, this provision also provides for a caterer's license so long as the above-required conditions are met; and,

WHEREAS, by duly qualified petition, the question was placed on the ballot on the November 2, 2004 election and was passed by a majority of the voters of the City of Franklin, Kentucky; and,

WHEREAS, Executive Order #2004-06 was entered in the Order Book of the County Judge Executive on November 16, 2004, containing the certification of the County Board of Election Commissioners of the results of said election, which is required by KRS 242.200; and,

WHEREAS, KRS Chapters 241-244 grant to cities the authority to promulgate legislation regulating alcoholic beverage sales within the corporate limits; and,

WHEREAS, the City Commission has determined that it is in the best interest of the citizens and residents of the City of Franklin, Kentucky, to enact this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FRANKLIN, KENTUCKY, as follows:

ARTICLE I -- IN GENERAL

Section 1.1 Purpose:

The purpose of this Ordinance is to establish uniform regulations and requirements for the licensing and regulation of alcoholic beverage sales pursuant to KRS 242.185(6) for any restaurant or dining facility which seats a minimum of one hundred (100) persons and which derives a minimum of seventy (70%) percent of its gross receipts from the sale of food. Further, all caterers that desire a license pursuant to this ordinance must comply with the uniform provisions of this ordinance and KRS 243.033. To realize this intent, the City shall implement this Ordinance in such a manner as to assure that:

(a) Restaurants and dining facilities licensed under this Ordinance shall seat a minimum of one hundred (100) persons. Only permanent seating, excluding bar-type stools, patio seating or temporary chairs available as needed, satisfies this seating threshold. Said seating must comply with all fire and safety capacity ratings and regulations.

(b) The sale of alcoholic beverages shall be accessory to the sale of food, offered only during times in which the licensee's kitchen and food service staff is on duty.

(c) Restaurants and dining facilities licensed under this Ordinance shall derive a minimum of seventy (70%) percent of their gross receipts from the sale of food as certified by periodic documentation as provided herein.

(d) Caterers shall comply with the provisions of KRS 243.033 and Article VI hereinbelow regarding caterers.

Section 1.2 Definitions:

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

Section 1.3 Scope:

(a) This Ordinance shall only apply to the sale of malt beverages, wine and distilled spirits on the premises of the licensee. Nothing in this Ordinance shall excuse or relieve the licensee, or the agent or any employee of any licensee thereof from the restrictions, requirements and penalties of any other Ordinance or Ordinances of the City or of any statutes of the Commonwealth of Kentucky relating to violations pertaining to alcoholic beverages.

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

ARTICLE II – LICENSES

Section 2.1 Scope:

Under this Ordinance a license shall only be extended to the owners and/or operators of those establishments which qualify under KRS 242.185 (6) and any other license which can be issued by the Kentucky Alcoholic Beverage Board by virtue of the passage of the referendum pursuant to KRS 242.185(6).

ARTICLE III -- DUTIES OF THE OFFICE OF THE CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

Section 3.1 List of Duties:

(a) The City Manager shall serve as the City Alcoholic Beverage Control Administrator (hereinafter referred to as "City ABC Administrator"), unless the City Manager shall appoint another person to fill the position of City ABC Administrator pursuant to KRS 241.170(2).

(b) The salary for said office, if any, together with the salaries of any other personnel assisting the City ABC Administrator, shall be fixed from time to time by the City Commission.

(c) 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, except that no amendment to these regulations proposed by the City ABC Administrator may be less stringent than the statutes relating to Alcoholic Beverage Control, or than regulations of the ABC Board. No regulation of the City ABC Administrator shall become effective until it has first been appropriately approved by the City Commission.

(d) 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 KRS 241.100. (KRS 241.170).

(e) The City ABC Administrator shall have all authority as authorized under Chapters 241 through 244 of the Kentucky Revised Statutes.

(f) Should the City ABC Administrator at any time have reasonable grounds to believe that any applicant, licensee, employee, or agent of a licensee, or any stockholder, member, agent or employee of a licensed corporation or limited liability company, has a criminal record, he shall have the authority to require such person to appear in person at the Franklin Police Department for the purpose of having his or her fingerprints taken.

(g) The City ABC Administrator before entering upon his or her duties as such, 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 (\$1,000.00) dollars. The cost of any necessary bond required under this section shall be borne by the City of Franklin.

(h) Appeals from the orders of the City 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 City ABC Administrator. Matters at issue shall be heard by the Board as upon an original proceeding. Appeals from orders of the City ABC Administrator shall be governed by KRS Chapter 13B.

ARTICLE IV -- APPLICATION/LICENSE

Section 4.10 Application:

(a) Any person, corporation, partnership, or other entity, except an applicant for the same license for the same premises, or an applicant for those other exempt licenses as are set forth in KRS 243.360(1) shall, before an application may be considered, advertise by publication under KRS 424.130(1)(b) the applicant's intention to apply for a license.

(b) The notice shall conform in all material respects to the following requirements:

(1) The notice shall state the name and address of the applicant if the applicant is an individual, the name and address of each partner and the name and address of the business if the applicant is a partnership, or if the applicant is a corporation, the names and addresses of each principal officer and director of the corporation, as well as the name and business address of the corporation itself, or the name and address of each member and the name and address of the business if the applicant is a limited liability company; and,

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

(3) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license(s) by writing the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601-8400, within thirty (30) days of the date of this legal publication."

(4) 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 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 ABC Board and the City of Franklin, as amended and supplemented from time to time.

(c) (1) 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 ABC Board and the City of Franklin including as follows:

(a) The name, age, Social Security number, address, residence and citizenship of each applicant;

(b) If the applicant is a partner, the name, age, Social Security number, address, residence, and citizenship of each partner and the name and address of the partnership;

(c) The name, age, Social Security number, address, residence, and citizenship of each person interested in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, limited partnership company, or limited liability company, the name, age, Social Security number, address, and residence of each officer, director, member, partner, shareholder (including the percentage ownership) and managerial employee and the citizenship of each, and the state under the laws of which the corporate applicant is incorporated or organized. The City shall perform background checks on all of the aforementioned individuals except stockholders who own less than forty percent (40%) of the total interest in the corporation. However, the City reserves the right to perform background checks on all stockholders, regardless of his/her/its interest;

(d) The premises to be licensed, stating the street and number, if the premises has a street number, and otherwise such a description that will reasonably indicate the location of the premises. If the premises is leased, the applicant shall attach a copy of the lease;

(e) Date residence was established in Kentucky, if a resident of Kentucky. If Franklin resident indicate when residence was established;

(f) Whether or not he or she has any interest in any other license or corporation or partnership holding a license under this act;

(g) Extent of such ownership;

(h) Whether or not he or she has any interest in any license or corporation or partnership holding a license in any other state or province;

(i) A statement that the applicant will in good faith abide by every state and local statute, regulation, and ordinance relating to the manufacture, sale, use of, and trafficking in alcoholic beverages.

(2) Each application shall be accompanied by a certified check, cash or a postal or express money order for the license fee. Promptly upon receipt thereof the City ABC Administrator shall transmit the same to the City Finance Department for deposit into 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 City ABC Administrator.

(e) All City licenses shall be in such form as may be prescribed by the City Commission and 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.

(f) All licenses approved by the City ABC Administrator and issued by the City of Franklin shall begin on May 1 of any year and shall expire on April 30.

(g) 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.

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

(i) In addition, any other penalties allowed by this Ordinance or any other statutory provision, a violation of this section shall authorize and require the revocation of the license and the City shall not be required to refund any portion of the license fee.

Section 4.11 Fees KRS 243.070:

(a) The annual City License fee for a limited restaurant license shall be \$800.00. The City, with approval of the City Commission, may increase this fee if allowed by the Kentucky Revised Statutes.

(b) The annual City License fee for a caterer's license is \$800.00. The City, with approval of the City Commission, may increase this fee if allowed by the Kentucky Revised Statutes.

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

Section 4.12 Refund of License Fees:

(a) 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 then the City shall refund to it the proportionate part of the license fee for the period during which it is prevented from carrying on said business if the licensee provides sufficient proof to the City ABC Administrator that such period of inactivity was not the fault of the licensee or the result of a revocation, suspension or other wrong doing by licensee or agent or employee of the licensee. The request for refund shall be submitted in writing to the ABC Administrator along with the reason(s) for the refund and the proof as set forth hereinabove.

Section 4.13 Lost or Destroyed Licenses:

(a) 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 City ABC Administrator after he shall be satisfied as to the facts, provided, however, that the person applying for said duplicate license shall pay a fee of Ten (\$10.00) Dollars for issuing said duplicate.

Section 4.14 Revocation or Suspension:

(a) Any license may be revoked or suspended by the City 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 ABC Board or of the Revenue Cabinet 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 Ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors of any rules or regulations of the City heretofore in existence or authorized by the terms of Kentucky Revised Statutes Chapters 241, 243 and 244 to be created, or if any clerk, agent, servant, or employee of any licensee shall violate any of the laws, regulations or ordinances above referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any such license may be revoked or suspended for any cause which the City ABC Administrator in the exercise of his sound discretion deems sufficient.

(b) 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.

(c) Any license must be revoked or suspended for the following causes:

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

(2) Making any false, material statements in an application for a license or supplemental license.

(3) Violation of the provisions of KRS 243.670.

(4) If, within a period of two (2) consecutive years, any licensee or any of his clerks, servants, agents or employees of the licensee shall have been convicted of two (2) violations of the terms and provisions of KRS Chapter 241, 243 or 244 or any act heretofore or hereafter in effect relating to the regulation of the manufacture, sale and transportation of alcoholic beverages or if, within such period, any licensee or any of the clerks, servants, agents or employees of the licensee shall have twice been convicted of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages, or if the licensee or any of his clerk, servants, agents, or employees are convicted of any felony.

(5) Failure or default of a licensee to pay an excise tax or any part of the tax or penalties imposed by or under the provisions of any statutes, ordinances, or Acts of Congress relative to taxation, or for a violation of any administrative regulations promulgated by the Revenue Cabinet made in pursuance thereof.

(6) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600, and 243.610, or 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.

(7) Setting up, conducting, operating or keeping, on the licensed premises, any gambling game, device, machine or contrivance, lottery, gift enterprise, handbook, or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such game, device, machine, contrivance, lottery, gift enterprise, handbook or facility. This section shall not apply to any activity authorized by the Kentucky Revised Statutes, contests in which eligibility to

participate is determined by chance and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.

(8) Conviction of the licensee, his agents, servants, or employees for:

(a) The sale or use upon the licensed premises of those items described in KRS 218A.050 to KRS 218A.130 as controlled substances;

(b) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances; or

(c) Knowingly receiving stolen property upon the licensed premises.

Section 4.15 Notice to Licensee; Surrender of License; Hearing:

(a) 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. The licensee shall at once surrender his license to the City ABC Administrator. If the revoked 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 officers to take physical possession of the license and return it to the City ABC Administrator.

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

(c) Appeal from the decision of the City ABC Administrator shall be to the ABC Board pursuant to the applicable provisions of the Kentucky Revised Statutes.

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

Section 4.16 Transfer or Assignment:

(a) For purposes of this section, "transfer" shall have the same meaning as is defined in KRS 243.630(1).

(b) No license issued under this Ordinance 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 One Hundred Dollars (\$100.00) shall be made to the City ABC Administrator. For situations involving changes in ownership of greater than ten percent (10%) and/or changes in members, partners, officers, shareholders or directors, see Section 4.20 hereinbelow.

(c) A licensee shall not acquire or otherwise dispose of any interest in a licensed premises or any license issued by the department, by sale of assets, stock, inventory, control or right of control, or activities on the licensed premises without prior approval of the City ABC Administrator. The City ABC Administrator shall grant approval if the person acquiring the interest meets the qualifications of a new applicant.

(d) Any acquisition of interest in a license without prior authorization as set forth herein shall be void.

(e) All applications for approval of a transfer shall be made in writing to the City ABC Administrator. Said applications shall be made under oath or affirmation, shall be signed by both the transferor and transferee, and shall contain such other information as the City ABC Administrator may proscribe.

(f) A licensee shall not transfer his or her license or any interest in the license while any proceedings against the license or the licensee for a violation of any statute or regulation which may result in the suspension or revocation of the license are pending.

(g) A licensee shall not transfer his or her license or any interest in the license if the licensee owes the City of Franklin or the Commonwealth of Kentucky for any outstanding taxes or fees as defined in Section 4.14(c)(5) of this ordinance or as required by any ordinance of the City of Franklin. A transfer shall not take place until the City ABC Administrator receives documentation from any applicable governmental agency that all taxes have been paid and/or that no taxes, fees or penalties are due and owing. This section shall not prohibit a transfer of a license or an interest in a license by a trustee in bankruptcy if all other requirements of this section are met.

Section 4.17 Refusal of License:

(a) A City license shall be refused:

(1) 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 other alcoholic beverage control statute, regulation, and/or city ordinance or regulation regarding alcohol beverage licensing, sales or the administration thereof.

(2) If the applicant has done any act for which a revocation of license would be authorized; or

(3) If the applicant has made any false material statement in his application.

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

Section 4.18 Review of License:

(a) Applicants to whom a license is issued authorizing the sale of alcoholic beverages by the drink, regardless of whether said license is a caterer's license or a limited restaurant license, pursuant to this Ordinance shall provide periodic information demonstrating compliance with the continuing requirement that seventy percent (70%) 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. In the event the seventy percent (70%) food requirement is not met in any particular quarter, the City ABC Administrator shall have the 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 (1) year in determining whether or not the seventy percent (70%) minimum food requirement has been met.

Section 4.19 Regulatory License Fee:

(a) A regulatory license fee is imposed on the gross receipts of sale of alcoholic beverages of each license issued by the City ABC Administrator. The City Commission shall adopt at the beginning of each budget period for each fiscal year such percentage rates as shall be reasonably estimated to insure full reimbursement to the City for the cost of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages. Such fee shall be in addition to any other tax, fee or license permitted by law, but a credit against such fee shall be allowed in an amount equal to the license or fee

imposed and such regulatory fee shall be applied annually from May 1 to April 30. Said license fee shall be eight (8%) percent of gross sales of alcoholic beverages as set by the City Commission for the fiscal year ending April 30, 2005 and shall continue thereafter until amended or repealed.

(b) Payment of such regulatory fees shall be remitted to the City ABC Administrator, and shall accompany the tax returns approved for such use by the City Commission. These returns and payments are due no later than by the end of the month immediately following each quarter of the licensing fiscal year (i.e. May 1 to April 30) at which time one-fourth (1/4) of the total annual fees shall be deducted as a credit.

(c) Failure to pay such quarterly remittance within ten (10) days of the due date constitutes a violation and subjects licensee to suspension revocation.

(d) Penalty for failure to file a return and pay quarterly remittance by the due date is 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).

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

Section 4.20 Change of Information:

(a) Since a number of licenses issued by the City are in the name of a partnership, limited liability company, or corporation, it is necessary that ownership changes in such partnership, limited liability company or corporation be reported to the City ABC Administrator. The City ABC Administrator can, therefore, investigate the person to whom the business interest or stock is transferred in order to ascertain whether that person is precluded by statute from holding an interest in an alcoholic beverage license.

(b) As used herein, the word "change" is construed to include any change in directors or officers of the corporation, or change in ownership of stock whereby any person secures ten percent (10%) of the outstanding stock. Transfer of more than forty percent (40%) of the total stock shall require a new license.

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

(1) The name, age, Social Security number, address, residence and citizenship of each new partner, member, director, officer or person securing any interest in an alcoholic beverage license

(2) If the applicant is a partner, the name and address of the partnership;

(3) The name, age, Social Security number, address, residence, and citizenship of each person interested in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, limited partnership company, or limited liability company, the name, age, Social Security number, address, and residence of each officer, director, member, partner, and managerial employee and the citizenship of each, and the state under the laws of which the corporate applicant is incorporated or organized. The City may require the names of all of the stockholders and the percentage of stock held by each;

(4) The street and number of the licensed premises to be licensed, if the premises has a street number, and otherwise such a description that will reasonably indicate the location of the premises. In addition, if the premises is leased, the applicant shall attach a copy of the lease;

(5) Date residence was established in Kentucky, if new partner, member, director, officer or person securing an interest in an alcoholic beverage license is a resident of Kentucky. If Franklin 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 his or her 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;

(9) A statement that the applicant will in good faith abide by every state and local statute, regulation, and ordinance relating to the manufacture, sale, use of, and trafficking in alcoholic beverages; and,

(10) 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.

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

Section 4.21 Dormancy:

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

(b) 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 City ABC Administrator.

(c) Except that the provisions of subsection (a) 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, acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease. Such licensee shall furnish to the City ABC Administrator a verified statement setting forth the fact that the licensee is unable to continue in business prior to the expiration of the ninety (90) days of inactivity, for any of the 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 thereunder within twelve (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 sound discretion.

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

Section 4.22 Approval of Premises:

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

Section 4.23 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 City at the time of the issuing the license; nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any delinquent taxes or fees due the City. Further, if a licensee becomes delinquent in the payment of any taxes or any fees due the City at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension.

Section 4.24 Books, Records and Reports:

(a) 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 reasonable 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 review.

(b) For the purpose of assisting the City 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 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.

ARTICLE V -- HOURS FOR SALE AND DELIVERY; RESTRICTIONS

(a) Upon the licensee being granted a license for the retail sales of distilled spirits, wine and malt beverages by the drink for consumption on its premises, it shall not be permitted to sell or dispense said beverages Monday through Saturday between the hours of midnight and 6:00 a.m.

(b) The licensee shall not sell or dispense distilled spirits, malt beverages and wine on Sunday except between the hours of 1:00 p.m. and 12:00 a.m.

(c) The licensee shall provide a separate locked department in which all stocks of distilled spirits, wine and malt beverages are kept during the hours when sales are prohibited. KRS 244.290.

(d) All delivery of alcoholic beverages in the City shall be made during normal business hours, Monday through Saturday. No delivery shall occur on Sunday.

(e) The licensee shall not sell or dispense any distilled spirits, wine or malt beverages during the hours that the polls are open on any regular or primary election day. The licensee shall remain closed during the hours the polls are open on any regular or primary election day unless it can provide a separate locked department in which all stock of distilled spirits, wine and malt beverages are kept during the hours the polls are open. KRS 244.290.

ARTICLE VI -- CATERER'S LICENSES

Section 6.1 Caterer's License:

(a) A caterer's license may be issued as a supplementary license to a caterer that holds a limited restaurant license.

(a) The caterer's license may be issued as a primary license to a caterer in any wet territory for the premises that serves as the caterer's commissary and designated banquet hall. No primary caterer's license shall be issued to a premises that operates as a restaurant. The alcoholic beverage stock of the caterer shall be kept under lock and key at the licensed premises during the time that the alcoholic beverages are not being used in conjunction with a catered function.

(b) The caterer's license shall only authorize the caterer to carry on such actions and perform such functions as are set out in KRS 243.033 specifically including, but not limited to the provisions relating to the percentages applicable to the sales of food versus gross receipts.

(c) All provisions of this ordinance that apply to a limited restaurant licensee shall also apply to caterer licensees to the extent applicable specifically including, but not limited to the provisions relating to application procedures, revocation and suspension of a license and quarterly and annual filings, except that the annual license fees for a caterer and limited restaurant licensee are listed separately as set forth in KRS 243.070.

ARTICLE VII -- CONDITIONS, PROHIBITIONS AND RESTRICTIONS

Section 7.1 Conditions, Prohibitions and Restrictions:

(a) 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.

(b) 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 Simpson 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 shall have the authority to confiscate any and all such radio receiving apparatus.

(c) The licensee shall be responsible for maintaining security on his 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) 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.

(e) 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.

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

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

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

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

ARTICLE VIII -- ENFORCEMENT

Section 8.1 Enforcement:

The City ABC Administrator and his or her designees are authorized to enforce this Ordinance for alleged violations.

Section 8.2 Penalties:

The following penalties shall be in addition to any criminal prosecution instituted in Simpson District Court against an alleged violator and fines hereunder shall be payable to the City ABC Administrator. The City 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 City Finance Department 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) nor more than Two Hundred Dollars (\$200.00) or imprisoned in the county jail for not more than six (6) months, or both, and for the second and each subsequent violation, he shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or imprisoned in the county jail 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, joint stock company, limited liability company, association or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.

ARTICLE IX -- SEVERABILITY

If any portion of this Ordinance is declared null and void, the remaining provisions will remain in full force and effect.

ARTICLE X -- EFFECTIVE DATE

Prohibition is lifted for the limited purpose hereinabove effective January 15, 2005.
BE IT FURTHER ORDAINED that the City Manager or Mayor of the City of Franklin and/or his designee, be and he is hereby authorized and directed to take all steps necessary to perfect this Ordinance.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holdings shall not affect the validity of the remaining portions of Ordinance.

All ordinances or parts of ordinances in conflict herewith, are, to the extent of such conflict, hereby repealed.

December 20, 2004

FIRST READING

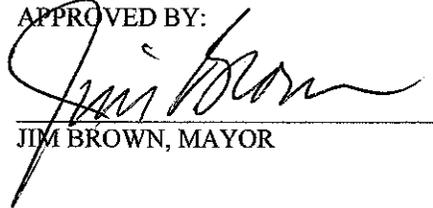
January 10, 2005

SECOND READING

At a meeting of the City Commission of the City of Franklin, Kentucky, held on January 10, 2005, on motion made by Mayor Jim Brown and seconded by Commissioner Wendell Stewart, the foregoing ordinance was adopted, after full discussion, by the following vote:

YES HERBERT WILLIAMS
NO BILL AUSTIN
YES WENDELL STEWART
NO HENRY STONE
YES JIM BROWN, MAYOR

APPROVED BY:



JIM BROWN, MAYOR

ATTEST:



KATHY STRADTNER, CITY CLERK
CITY OF FRANKLIN, KENTUCKY