

ORDINANCE NO. 15-10-03

AN ORDINANCE AMENDING
THE
CITY OF BENTON, KENTUCKY
ORDINANCE NO. 15-09-01
REGULATING ALCOHOLIC BEVERAGES
IN THE
CITY OF BENTON, KY

WHEREAS, the City Council of the City of Benton, Kentucky has enacted an Ordinance regulating the sale of alcoholic beverages in the City of Benton, Kentucky; and

WHEREAS, the Ordinance as enacted contained provisions that may encroach upon the State's authority to regulate the sale and distribution of alcoholic beverages; and

WHEREAS, the City Council intends for its Ordinances and regulations to comply with all of Kentucky's Alcoholic Beverage Control laws and any amendments and supplements thereto;

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Benton, Kentucky that Ordinance No. 15-09-01 enacted on September 14, 2015, shall be amended as follows:

10.008 EXPIRATION OF LICENSE; PRORATION OF FEES.

All city licenses shall begin on ~~December 1~~ February 1 of any year and shall expire on ~~November 30~~ January 30 of the following year. Any licenses issued after ~~December 1~~ February 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 one-half (1/2) the amount of the full fee for an annual license of that type.

All city licenses shall begin on February 1 of any year and shall expire on January 30 of the following year. Any licenses issued after February 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 one-half (1/2) the amount of the full fee for an annual license of that type.

OFFICE OF THE CITY ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATOR

10.013 ESTABLISHED; DUTIES.

(H) Should the City ABC Administrator at any time have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any stockholder, agent or employee of a licensed corporation, LLC or other business organization, has a criminal record, he or she ~~shall have the authority to~~ may require such person to appear in person at the Benton Police Department for the purpose of having his or her fingerprints taken.

(K) 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 City ABC Administrator appealed to the ABC Board or any 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.

APPLICATION FOR LICENSE; MAINTENANCE OF LICENSE

10.014 ADVERTISEMENT.

(B) 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 license is sought, and the type of license for which application is made. 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 by writing to ~~City of Benton ABC Administrator, City Hall, 1009 Main Street, Benton, KY 42025~~ the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, KY 40601, within thirty (30) days of the date of legal publication." Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the City.

10.016 FORM OF APPLICATION.

(B) 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, including as follows:

- (1) Name and address;

- (2) Nature of interest;
- (3) Whether or not a citizen of the United States;
- (4) Date of birth and Social Security Number;
- (5) Date residence was established in Kentucky, if a resident of Kentucky. ~~If Marshall County or Benton resident, indicate when residence was established;~~
- (6) 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 ordinance;
- (7) Extent of stock or company ownership;
- (8) 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.
- (9) If the applicant is a partnership, 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 the stockholders and the percentage of stock held by each;
- (10) 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;
- (11) A statement that neither the applicant nor any other person referred to in this section has been convicted of; any misdemeanor directly or indirectly attributable to alcoholic beverages; any violation of KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 within the two (2) years immediately preceding the application; any felony, within five (5) years from the later of the date of parole or the date of conviction; or providing false information to the department preceding the application; and that the applicant or any other person referred to in this section has not had any license that has been issued to him under any alcoholic beverage statute revoked for cause within two (2) years prior to the date of the application; and
- (12) 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.
- (13) If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the City ABC Administrator within ten (10) days after the change.
- (14) In giving any notice or taking any action in reference to a license, the City ABC Administrator may rely upon the information furnished in the application or in the supplemental statement connected with the application. This information, as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application or supplemental statement shall be deemed material in any prosecution for perjury.

(C) Each application shall be accompanied by a certified check, bank check or a postal or other money order for the amount of the license fee, less the \$50.00 application fee.

(D) 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. ~~The City Council has adopted a statement of guidelines and priorities for the issuance of licenses and, in order to determine the extent to which applications may further or impede the objectives of those guidelines, the City Council may, by municipal order, adopt a questionnaire to be submitted to applicants for licenses. Upon adoption of the questionnaire, it shall become a part of the application process. The initial questionnaire adopted by the City Council is a part of this Ordinance and is incorporated in the ordinance codified herein as Exhibit A. The questionnaire may be altered, expanded, supplemented or replaced by order of the City Council hereafter.~~ In addition to the information contained in the application and ~~any city ordered questionnaire,~~ the City ABC Administrator may require such other information as the City ABC Administrator may in his/her discretion deem desirable, reasonable or appropriate to the consideration of the application.

10.017 OTHER CONDITIONS.

(C) No license to sell alcoholic or malt beverages ~~shall~~ may be granted or renewed to any person who is delinquent in the payment of any taxes, utility bills, or fees due the City at the time of issuing the license, nor ~~shall~~ 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 delinquent taxes, bills, or fees due the City. Further, if a licensee becomes delinquent in the payment of any taxes, bills, 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.

10.019 CHANGE OF INFORMATION.

(1) 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 ten percent (10%) of the outstanding ownership or stock. Transfer of more than ten percent (10%) of the total ownership or stock shall require a new license transfer approval under Section 10.024.

10.023 PROCEEDINGS FOR REVOCATION OR SUSPENSION OF LICENSE; NOTICE AND OPPORTUNITY TO CONTEST; APPEAL; EFFECT OF REVOCATION OR SUSPENSION.

(B) The hearing shall be conducted before the City Code Enforcement Board and shall be informal. The licensee may present evidence and the ~~Mayer~~City ABC Administrator is authorized to swear witnesses. Counsel for the licensee is permitted to attend. ~~In conducting the hearing, the Code Enforcement Board shall be limited to determining whether or not the City ABC Administrator abused his or her discretion in deciding upon the action to be taken. The Code Enforcement Board may affirm, modify, or reverse the action taken~~ make recommended orders to uphold, modify, or reverse that action taken by the City ABC Administrator, at which

time the licensee may seek further appeal any final order of the City ABC Administrator under KRS 243.550 and KRS 247.200.

~~(E) Appeal from the decision of the Code Enforcement Board affirming the City ABC Administrator~~ City ABC Administrator revoking or suspending a license shall be to the State ABC Board. The timely filing of an appeal shall stay further proceedings for revocation.

10.025 REFUSAL OF LICENSE; GUIDELINES FOR APPROVAL OF QUOTA LICENSES.

~~(B) In the case of quota licenses, before approving an application, the City ABC Administrator is hereby directed to consider, in addition to the factors set out in KRS 243.450, 243.490 and 243.500, and any other factors the City ABC Administrator determines in his or her discretion to be reasonable and pertinent to the license application, the following criteria:~~

~~— (1) Ownership: The City Council places great value on business owners who are invested in the community.~~

~~— (2) Economic impact: The City Council desires businesses which make the most positive impact on the community, in number of jobs, payroll, property investment and revenues to the city.~~

~~— (3) Site of business: The City Council is interested in serving all geographic areas of the city. Therefore, the city does not wish to cluster all licensed ABC outlets in one area.~~

~~— (4) Aesthetics: The City Council is committed to protecting the character and beauty of our community.~~

~~— (5) Capital: The City Council values businesses that demonstrate their ability to financially support and sustain their viability. Financial capability of the proposed proprietor is important.~~

~~— (6) Public support of licensed business in the area: The City Council intends that public sentiment and safety be considered in deciding upon the approval of retail liquor sales licenses in any area of the city.~~

~~(C) An applicant who has been refused a license by the City ABC Administrator may appeal the refusal to the ABC Board pursuant to KR 241.200.~~

MISCELLANEOUS PROVISIONS

10.029 CONDITIONS, PROHIBITIONS AND RESTRICTIONS.

~~(Q) No license for quota retail package cells shall be issued for any proposed business situs other than in a C-1 or C-2 zone within the City. All locations within each of these zones shall be subject to the provisions of the City's Planning and Zoning Ordinance.~~

-(RQ) Violation of this section shall subject the licensee to penalties provided in this Ordinance and shall be cause for revocation of license.

10.031 CONSUMPTION ON LICENSED PACKAGE PREMISES PROHIBITED; CONGREGATING ON CERTAIN ABC LICENSED PREMISES AND VACANT PREMISES PROHIBITED.

(A) (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 they also had the appropriate drink license. A 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 by a sampling license~~ under the provisions of KRS 244.050, or beereducational tastings as permitted in 804 KAR 11:030 and 804 KAR 1:110.

(B) 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.

~~(C) No person or entity being the owner or otherwise in possession or control of any vacant property shall knowingly allow or permit habitual congregating of persons on the unenclosed portion of such property so as to constitute a public nuisance.~~

(1) No persons shall congregate for the purposes, under the circumstances, or in the places proscribed in divisions (A) and (B) of this section.

(2) It shall be a defense to any prosecution under division (A) or (B) of this section if such licensed vendor or property owner shall post or permit law enforcement to post and maintain a legible, painted or printed sign in at least two (2) separate prominent places in such area, in letters of not less than three (3) inches in height, stating that congregating of persons is prohibited and that violators shall be prosecuted for trespass pursuant to KRS 511.080.

(3) As used in this section, the term:

(a) "HABITUAL" shall mean consistent, that is, by frequent practice or use, but not necessarily constant or exclusive;

(b) "PACKAGE LIQUOR STORE" shall mean a retail establishment selling distilled spirits, wine and malt beverages in package containers pursuant to licenses issued for those purposes;

(c) "PUBLIC NUISANCE" shall mean 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; and

(d) "VACANT PROPERTY" shall mean a vacant lot on which no building or other structure exists or property on which any structure is unoccupied or unused, or which otherwise reflects abandonment by the owner or person with the right of occupancy.

10.036 PATIO AND OUTDOOR SALES

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

~~(B) Procedure. Anyone wishing to obtain an outdoor alcoholic beverage license must first have obtained a liquor by the drink license.~~

~~— (1) Application for an outdoor alcoholic beverage license shall be made to the City ABC Administrator.~~

~~— (2) If a restaurant has obtained an outdoor alcoholic beverage license, but moves to a new location or if the outdoor alcoholic beverage area is altered or relocated at an existing premises, the permit shall be automatically terminated and a new application will be required.~~

~~(B)~~ Required conditions. The City may grant an outdoor alcoholic beverage license if the following conditions are met:

(1) The only entrance and exit to the outdoor alcoholic beverage area shall be through the principal structure. The perimeter of the outdoor alcoholic beverage area shall be clearly defined with decorative walls or fencing at a minimum height of three (3) feet so as to provide control over the operation of the outdoor alcoholic beverage area in conjunction with the landscaping requirements as prescribed in section two (2); otherwise, a solid enclosure at a minimum height of four (4) feet is required. The outdoor alcoholic beverage area is intended to provide separation from pedestrians. One (1) emergency exit is required for the outdoor area done in accordance with any applicable fire codes.

(2) Some combination of evergreen vegetation or landscaping will be required, around the perimeter of the outdoor alcoholic beverage area, to provide partial screening at a minimum height of four (4) feet with plantings spaced on a maximum of a four (4) foot center. These requirements will not be used to reduce or minimize any other screening ordinance in place.

(3) A seating plan must be submitted along with the proposed surface area. The seating plan will be reviewed to provide recommendations. The surface area of the outdoor alcoholic beverage area should generally be a hard surface.

(4) Lighting is required. The lighting shall be of a subdued nature and not imposing to any adjacent property.

(5) All plans are to be reviewed and approved by the City prior to issuance of an outdoor alcohol beverage license.

(6) Any restaurant not in compliance with this section on the day of its adoption shall have one hundred and twenty (120) days to come in compliance.

(7) The licensee shall at all times ensure that the operation of an outdoor seating area does not unreasonably interfere with the quiet enjoyment of neighboring properties.

(DC) Notwithstanding the foregoing requirements which contemplate a completely enclosed outdoor seating area, an application for an outdoor alcoholic beverage license may be approved if the applicant can demonstrate that one or more natural or artificial barriers will provide an adequate means of:

(1) Preventing persons who are under the age of 21 from purchasing or consuming alcoholic beverages;

(2) Preventing persons who did not enter the premises from one of the main entrances from entering the outdoor seating area;

(3) Preventing persons from leaving the premises, unless it is an emergency, without exiting through one of the main entrances;

(4) Permitting, at any given time, the licensee to quickly and readily provide a reasonably accurate head count of the number of patrons in the outdoor seating area.

All other provisions of ORDINANCE NO. 15-09-01 not inconsistent with the foregoing amendments are reaffirmed in all respects as if set out verbatim in this Ordinance.

Passed this 19 day of October, 2015.


RITA DOTSON, MAYOR

ATTEST:


MICHELE EDWARDS, CITY CLERK

FIRST READING: 10-12-2015
SECOND READING: 10-19-2015
PUBLICATION: 10-27-15

COUNCIL MEMBERS VOTING:

	<u>AYE</u>	<u>NAY</u>
CHARLES EDMONDS	<u>✓</u>	_____
STANLEY HOLLAND	<u>✓</u>	_____
TIM KING	<u>Absent</u>	_____
CHRIS FREELAND	<u>✓</u>	_____
RITA MURRAY	<u>✓</u>	_____
SHERRA RILEY	<u>✓</u>	_____