

CITY OF MANCHESTER

ALCOHOL BEVERAGE CONTROL ORDINANCE # 2011-005

BE IT ORDAINED BY THE CITY OF MANCHESTER THAT:

ARTICLE ONE: GENERAL PROVISIONS SECTION (I) TITLE

This ordinance shall be known and may be cited as the Alcoholic Beverage Control ordinance of the City of Manchester, Kentucky.

SECTION (II) INCORPORATION OF STATE LAW; COMPLIANCE REQUIRED

- A. The provisions of the Kentucky Alcoholic Beverage Control laws contained in Kentucky revised Statutes (KRS) Chapters 241, 242, 243 and 244 pertaining to licenses and regulations of the State Alcoholic Beverage Control board, including definitions contained therein, as well as amendments and supplements thereto, are hereby adopted as part of the Alcoholic Beverage Control law of the City of Manchester, except as otherwise lawfully provided herein. As used herein "State" means the Commonwealth of Kentucky, and "City" means the City of Manchester, Kentucky.
- B. Any violation of State law relating to the sale, production, storing or otherwise trafficking in alcoholic beverages shall also constitute a violation of this Ordinance.
- C. No person shall sell, deal in, barter or exchange or possess for sale or for the purpose of evading any law or ordinance, give away any alcoholic beverage in any quantity whatever or cause the same to be done, without complying with all the provisions of this ordinance and all State statutes and regulations applicable thereto.
- D. Any prohibitions, restrictions and regulations pertaining to alcoholic beverages contained in KRS Chapter 244 shall apply to alcoholic beverage use in the City.
- E.

SECTION (III) SCOPE OF COVERAGE

- A. This ordinance shall be construed to apply to the traffic in malt beverages, distilled spirits, and wine where the context permits such applications. Unless the context otherwise admits or requires the term "alcoholic beverage" or "alcoholic beverages" shall mean and shall include distilled spirits, wine and malt beverages.

- B. Nothing contained in this ordinance shall excuse or relieve the owner, proprietor, employee or person in charge of any licensed premises in the City where alcoholic beverages are sold from the restrictions, requirements and penalties of any other ordinance or ordinances of the City or of any State statutes or regulations.

SECTION (IV) DEPOSIT OF FEES, FINES TO GENERAL FUNDS

All monies derived from license fees or from fines as provided in this ordinance shall be paid to the treasury of the City and become a part of the general funds of the City.

SECTION (V) NOTICE TO STATE ABC BOARD OF FEES LEVIED

This ordinance is and shall be subject to the provisions of KRS 243.610. The City Clerk shall give notice to the State Alcoholic Beverage Board of any fees or assessments levied under the provisions of this ordinance.

ARTICLE TWO: ADMINISTRATION

**SECTION (VI) OFFICE OF ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION ESTABLISHED**

- A. Pursuant to KRS 241.160, inclusive and specifically 241.060 and 241.190 the office of Manchester Alcoholic Beverage Control Administration (MABC) is created.
- B. Pursuant to KRS 241.170, the City Alcoholic Beverage Control Administrator (MABC) shall be appointed by the Mayor and such appointment shall be approved by the City Council. The City Alcoholic Beverage Administrator (MABC) shall serve at the pleasure of the Mayor.
- C. The City has heretofore, created the non-elected city office named "City Administrator." The Alcoholic Beverage Control Administrator official mandated by KRS 241.170 is referred in KRS Chapters 241 through 244 as "city administrator" and the definition of city administrator contained in KRS 242.010 (12) provides that this term "...means city alcoholic beverage control administrator." All referenced to city administrator in KRS Chapters 241 through 244 shall be construed, for the purposes of this ordinance, to refer to the Manchester Alcoholic Beverage Control Administrator (MABC).

**SECTION (VII) CITY ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATOR (MABC) TO ENFORCE**

The MABC shall have the power and authority to promulgate such regulations as may be necessary to implement and/or administer this Ordinance.

SECTION (VIII) FUNCTIONS, DUTIES AND POWERS

- A. The functions of the MABC shall be the same with respect to City licenses and regulations as is the function of the Kentucky Alcoholic Beverage Control Board ("Board") with respect to State licenses and regulations, except that no regulation of the MABC shall be less stringent than the State statutes and regulations relating to alcoholic beverage control. No regulation of the MABC shall become effective until it has been approved by The Board.
- B. The MABC shall have the same powers and duties with respect to suspension and revocation for cause of City licenses as the State Alcoholic Beverage Control Board has with respect to State licenses under KRS 241.060. The MABC, on his or her own initiative or on the complaint of any person, may institute proceedings to revoke or suspend any license issued under this Ordinance.

SECTION (IX) ADMINISTRATOR TO HAVE POLICE POWER

The MABC and the MABC'S investigators shall have the full police powers of peace officers, and their jurisdiction shall be coextensive with the boundaries of the City. They may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant.

SECTION (X) RIGHT OF INSPECTION

The MABC shall have access at all reasonable times for inspections, all books and records required to be maintained by licensees under KRS 244.150, and shall simultaneously receive copies of all reports submitted by licensees to the State Alcoholic Beverage Control Board.

SECTION (XI) ANNUAL REPORT

The Alcoholic Beverage Control Administrator shall make an annual written report of his office to the City Council by May 20th of each year.

SECTION (XII) LICENSES AND LICENSE FEES

The City shall have the power and authority to issue the following types of distilled spirits and wine licenses upon proper application and payment of the prescribed fee. The Section shall not be construed to limit the City's authority under KRS

242.185(4) and Section XIII of this Ordinance, or any other provision of law, to issue licenses permitted by KRS 243.070. 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 following schedule. 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. Each application shall be accompanied by a non-refundable application fee in the amount of \$50.00 for each license applied for hereinunder.

SECTION (XIII) DISTILLED SPIRITS AND WINE LICENSE FEES:

The following distilled spirits and wine licenses may be issued by the City, the fees for which shall be:

(1)	Distiller's license, per annum.....	\$500.00
(2)	Rectifier's license, per annum.....	\$3,000.00
(3)	Blender's license per annum.....	\$3,000.00
(4)	Wholesaler's license, per annum....	\$3,000.00
(5)	Retail package license, per annum...	\$600.00
(6)	Retail drink, motel drink, airport drink, restaurant drink and supplemental bar license, per annum.....	\$600.00
(7)	Special temporary liquor license per event.....	\$130.00
(8)	Restaurant wine license per annum.....	
	(a) New applicants.....	\$600.00
	(b) Renewals.....	\$400.00
(9)	Special Sunday sale retail drink license, per Annum.....	\$300.00
(10)	Special temporary wine license, per event....	\$50.00
(11)	Special temporary auction license, per event....	\$200.00
(12)	Nonresident special agent or solicitor's license Per annum.....	\$40.00
(13)	Bottling house or wine storage license, Per annum.....	\$1,000.00
(14)	Souvenir retail liquor license, per annum....	\$1,000.00

SECTION (XIV) MALT BEVERAGE LICENSE FEES:

The following kinds of malt beverage licenses may be issued by the City, the fees for which shall be:

(1)	Brewer's license, per annum.....	\$500.00
(2)	Microbrewery license, per annum.....	\$500.00
(3)	Distributor's license, per annum.....	\$400.00
(4)	Retailer's license, per annum.....	\$200.00
(5)	Special temporary license, per event.....	\$25.00

- (6) Special Sunday malt beverage retailer's license,
Per annum..... \$125.00
- (7) Brew on premises license, per annum..... \$100.00

SECTION (XV) OTHER LICENSE FEES:

The following kinds of other licenses may be issued by the City, the fees for which shall be:

- (1) Convention center license, per annum..... \$2,000.00
- (2) Extended hours supplemental license per annum.. \$2,000.00
- (3) Horse race track license, per annum..... \$2,000.00
- (4) Caterer's license, per annum..... \$800.00
- (5) Riverboat license, per annum..... \$1,200.00
- (6) Automobile race track license, per annum..... \$2,000.00
- (7) Limited restaurant license or limited golf course
License, per annum (includes distilled spirits, wine,
And malt beverages) new applicants..... \$800.00
- (8) Special private club license, per annum..... \$300.00

SECTION (XVI) CERTAIN SPECIAL LICENSES DEFINED

- (1) **TEMPORARY LICENSES:** A special temporary distilled spirits and wine license or a special temporary wine license may be issued only as set out in KRS 243.260. This license shall authorize the licensee to exercise the privileges of the license for a specified and limited time, not to exceed thirty (30) days. In the case of a nonprofit organization holding a retail malt beverage license, such organization may be issued a distilled spirits and wine special temporary license or a special temporary wine license to sell distilled spirits and wine by the drink on the licensed premises, in conjunction with any public or private event, for a specified and limited time, not to exceed ten (10) days. A malt beverage temporary license maybe issued only as set out in KRS 243.290 and is subject to all conditions and regulations provided at the issuance of the license.
- (2) **PRIVATE CLUB LICENSE:** A special private club license may be issued only as authorized in KRS 243.270 to a nonprofit social, fraternal, military or political organization or club, which for more than one (1) year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded. The privileges of the license shall be exercised only on premises where the general public is excluded.
- (3) **SPECIAL LICENSE REQUIRED FOR SUNDAY SALES:** No licensee shall offer alcoholic beverages for sale any time between 12:00 midnight Saturday and 6:00 a.m. on Monday unless the licensee shall have obtained a special license for Sunday retail sales of alcoholic beverages by the drink.
 - a. Package retail sales of alcoholic beverage on Sunday are expressly excluded hereby.

- b. A special license for Sunday sales of alcoholic beverages by the drink may be applied for and granted to otherwise qualified applicants for facilities having at least 100 seats and whose retail food sales are at least 50% of the licensee's total retail sales at that facility as proven by the quarterly tax returns required hereinunder.
 - c. A special license for Sunday sales of malt beverages for consumption on premises of most beverages purchased on site may be applied for and granted to otherwise qualified applicants if the facility has at least 50 chairs as defined by statute. No beverages may be removed from the site/facility at any time or consumed outside of the premises of the licensee as described in the application for the license.
- (4) All restrictions and prohibitions applying to regular retail drink distilled spirits and wine licenses and retail malt beverage licenses shall apply to the special licenses, unless otherwise provided by law.

(5)

SECTION (XVII) EXPIRATION OF LICENSE, PROPORATION OF FEES:

All city licenses, except temporary licenses, shall begin on May 1st of any year and shall expire on April 30th of the following year. Any licenses issued after November 30th 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.

SECTION (XVIII) PAYMENT OF LICENSE FEES, DELIQUENCY:

No licensee shall enter into or begin operating any business for which a license is required by this ordinance 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 a license fee within ten (10) days after it becomes due shall result in a penalty equal to ten percent (10%) of the license fee. Any licensee failing to pay the fees, including penalties, within ten (10) days after such fees are due may be subject to revocation of license.

SECTION (XIX) CONSUMPTION OF DRINK ON PREMISES; LICENSE REQUIRED; FEE:

- A. The City Council of the City, pursuant to KRS 242.185, has determined that economic hardship exists within the City, as is evidenced by its high rate of unemployment, slow rate of growth, loss due to destruction of a significant number of commercial buildings, both in the Central Business District and elsewhere and a significant number of vacancies in the remaining commercial buildings in the City. The City Council has further determined that the licensing authorization contained in subsections "B" and "C" of this Section could aid economic growth. Further, the City Council adopts this Ordinance, i.e. the "Alcoholic Beverage Control Ordinance of the City of Manchester," as a comprehensive, regulatory ordinance covering, inter alia, the licensing and

operation of hotels, motels, inns and restaurants for the sale of alcoholic beverages by the drink for consumption on the premises.

- B. The City shall have the power and authority to issue licenses authorizing hotels, motels, inns or restaurants to sell alcoholic beverages, i.e. (1) distilled spirits and wine by the drink for consumption on the premises; and (2) malt beverages if a malt beverages license is obtained. The licenses shall only be issued to hotels, motels or inns containing not less than fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons at tables, or bona fide restaurants open to the general public having dining facilities for not less than one hundred (100) persons. The term “bona fide restaurants” as used in this section shall mean, in addition to having the minimum seating requirements set forth above, restaurants which derive at least fifty percent (50%) of their gross revenues from the sale of food; this requirement is and shall be in accord with KRS 242.1295.
- C. In accordance with KRS 242.185(4), the MABC is authorized to issue any license permitted by KRS 243.070 and the activity thereby licensed is permitted in accordance with State Law and City Law.
- D. Unless a different license fee is provided for in this Ordinance, the City of Manchester license fee for any license authorized by KRS 243.070 as it may be amended from time to time, shall be as stated in said statute.
- E. All regulations which may be issued to administer KRS 242.185, this section of this ordinance and any other provision of this ordinance or State Law, shall conform to the requirements of KRS 241.190.
- F.

SECTION (XX) SPECIAL PRIVATE CLUB LICENSE; FEES:

The City shall have the power and authority to issue a private club license to any nonprofit social, fraternal, military or political organization or club, which for more than one year prior to the date of application has maintained and operated a club room or rooms from which the general public is excluded. The license shall authorize the licensee to exercise the privileges of a retail malt beverage licensee and distilled spirits and wine retail drink licensee at the designated premises, if the general public is excluded. All restrictions and prohibitions applying to a distilled spirits and wine retail drink license shall apply to a special private club licensee. (KRS 243.270).

LICENSE TYPE	FEE
Special Private Club License, per annum	\$300.00

SECTION (XXI) MALT BEVERAGE CONSUMPTION ON PREMISES:

The City Council of Manchester has determined that it is desirable and appropriate to regulate conduct on premises licensed to sell malt beverages at retail.

State law makes no distinction between package sales of malt beverages and sale of malt beverages for consumption on the premises. The City finds that while a number of licensed premises may be suitable for the sale of malt beverages to be removed for consumption elsewhere, there are also a number of premises which are suitable and appropriate for consumption of malt beverages on the premises. Examples of premises deemed unsuitable for on premises consumption of malt beverages include, but are not limited to, package distilled spirits and wine stores, grocery stores, convenience stores and premises which do not have adequate facilities for the congregation of customers who are consuming on premises, such as availability of food, adequate restrooms and seating for customers. Premises considered to be adequate for retail sales of malt beverages for consumption on the sale premises of beverages purchased there by the drink, and not to be taken off the premises, include, but are not limited to facilities with at least 50 chairs, adequate permanent restrooms and which are approved by all pertinent regulatory agencies including but not limited to, the MABC, the State Fire Marshall, the Health Department and the Building Code Inspector.

- A. Except for special temporary retail malt beverage licenses issued for consumption of malt beverages on the premises, no malt beverage licensee shall allow consumption of any malt beverage on the licensed premises unless the licensee also holds, for the same premises a:
 - 1. Restaurant wine license, or
 - 2. Hotel/Motel/Inn drink license, or
 - 3. Restaurant drink license, or
 - 4. Special private club license, or
 - 5. Retail malt beverage sales license.
- B. If no license set out in subsection (A) of this section is held by the malt beverage licensee, malt beverage consumption on the premises may nevertheless be allowed by the licensee on a restaurant premises having seating at tables for no less than 50 persons and which receives no less than fifty percent (50%) of its total of food sales and alcoholic beverage sales from the sale of food.
- C. The intent of this section is to regulate and establish standards of conduct on premises selling malt beverages under license. This section shall not be construed as imposing any limitation upon the number of malt beverage licenses issued pursuant to this Ordinance. Nothing contained in this section shall be construed as prohibiting a licensee from selling malt beverages upon the licensed premises. The sole prohibition contained in this section is allowing consumption of malt beverages on the licensed premises if the nature of the premises does not conform with one of the situations described in (A) (1), (2), (3), (4) or (5) or subsection (B) of this section.

SECTION (XXII) SPECIAL SUNDAY SALE
LICENSES NOT AUTHORIZED

This ordinance shall not be construed to authorize City special Sunday sale retail by the drink licenses, except as otherwise provided for herein. See Section XIII (page 7), Section XLV (page 8) and Section XVI (page 10).

SECTION (XXIII) LICENSE TERM; RENEWAL

Applications for renewal of licenses required by this Ordinance shall be made for each license year, which in order to coincide with the States license year, shall begin the first day of May and extend through the last day of April of the succeeding year. Applications for renewal are to be filed with MABC no less than fifteen (15) nor more than forty-five (45) days prior to expiration.

SECTION (XXIV) PRO-RATION; REFUNDS PROHIBITED

Pro-ration of fees shall be as provided for State licenses in KRS 243.090. In the event any licensee shall cease doing business for any reasons, no refund of the City license fee shall be granted to such licensee.

SECTION (XXV) ASSIGNMENT, TRANSFER, CONTINUANCE, LICENSE REPLACEMENT

- A. The assignment, transfer, continuance, pledge or hypothecation of City licenses shall be governed by the provisions of KRS 243.630, 243.640, 243.650 and 243.660. An approval by the State, under those statutes, shall be deemed an approval by the City. Non-approval by the State shall be deemed as non-approval by the City. No City license may be sold or otherwise transferred (including transfer to another premises) unless the proposed transfer shall have first receive the approval of the State Board and thereafter the acknowledgment of the MABC is given. A transfer fee of \$25.00 shall be paid to the City.
- B. When a license has been lost or destroyed the MABC may issue a duplicate or replacement license upon payment of a fee of \$25.00.
- C.

SECTION (XXVI) LOCATION OF BUSINESS RESTRICTED

Licenses under this Ordinance shall not authorize the conduct of business in any place other than that described in the original State application and license. Any additional buildings or rooms attached to licensed premises and requiring separate service bars shall require a City supplemental bar license.

SECTION (XXVII) LETTER OF INTENT, APPLICATION; CONTENTS; EMERGENCY ACTION

- A. Before any application pursuant hereto will be accepted and filed for consideration by the City and the MABC, the applicant must have submitted an original, signed and notarized Letter of Intent to apply for a license hereunder. The letter must contain the name and address of the applicant and the name and address of all persons with or intending to

possess an ownership interest in the license sought or the business premises to which the license will apply. The original Letter of Intent to apply for license shall be submitted along with four (4) copies to the City Clerk and MABC. This Notice of Intent is separate from and in addition to the publication requirements set forth in Paragraph B below.

B. 243.360 NOTICE OF INTENTION TO APPLY FOR LICENSE –

PROTEST:

- (1) Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for an out of state brewer's license, supplemental bar license, extended hours supplemental license, a special agent or solicitor's license, a bonded warehouse license, a freight forwarding license, a storage warehouse license, an industrial alcohol license, a nonindustrial alcohol license, a storage warehouse license, a non beverage license, a vendor license, a transporter's license, a Sunday license, or a temporary drink license shall before applying for a license under KRS 243.030 and 243.040 advertise by publication under KRS 424.130 (1)(b) his or her intention to apply for a license.
 - (2) The published notice shall conform in all material respects to the following requirements:
 - (a) The notice shall state: the name and address of the applicant if the applicant is an individual, the name and address of each partner owning an interest in either the license or premises and the name of the business and its address. The applicant is a partnership the name and address of each principal officer and director thereof together with the name and business address of the partnership or corporation if the applicant is a corporation; must be set forth;
 - (b) The notice shall specifically state the location of the premises for which the license is sought and the type of license being requested; and
 - (c) 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 the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, within thirty (30) days of the date of legal publication.
 - (3) Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the board.
- C.** An applicant for a license under the ordinance shall file with the MABC a copy of such applicant's State license application containing the information required by KRS 243.380 and 243.390. The City application shall include the express written consent of the applicant permitting the MABC to inspect and search the licensed premises at any reasonable time,

to confiscate articles found on the premises in violation of any ordinance, statute or regulation and to order an emergency temporary closure of the premises if the public health, safety, morals and welfare is threatened by one or more violations of any ordinance or statute involving disturbance of the peace or public disorder. The temporary closure shall remain in effect until review of the alleged violations by the MABC, which review shall occur within thirty six (36) hours of the imposition of the temporary closure.

D. MALT BEVERAGE KEG REGISTRATION:

As used in this section, "keg" is defined as a container designed and capable of holding six (6) or more gallons of malt beverage. All retail licensees (herein after referred to as "licensee") operating within the City of Manchester who sell malt beverages in kegs for consumption off the premises of the licensee shall attach a numbered identification tag or other device as provided by the City to each keg at the time of sale and shall require the purchaser to complete and sign a keg registration form for the keg stating the following:

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

Sec. 9.3 The licensee shall obtain the name, address and telephone number of the purchaser and shall require the purchaser to produce a valid driver's license number, and if that is not available, to produce at least one other valid form of identification.

Sec. 9.4 The licensee shall retain copies of the keg registration forms for a period of one year and shall make the keg registration form available for inspection by state and local alcoholic beverage control officers and other enforcement officers.

Sec 9.5 The keg registration form shall be forwarded to the city administrator within five (5) working days in all situations when the keg is not returned or is returned with the identification tag removed or obliterated.

Sec 9.6 The city administrator is authorized to develop appropriate rules and regulations and to develop and make available forms for the identification tags and keg registration forms.

Sec 9.7 All licenses that sell or offer for sale kegs shall post on the licensed premises a notice provided by the City concerning the provisions of this Section.

Sec 9.8 It shall be unlawful for any licensee to sell or offer for sale kegs without the identification tags attached and the keg registration form completed. It shall also be unlawful for any person to remove or to obliterate the identification tag or to fail to have the declaration form visible and readily accessible from the location of the keg. The penalties for violation of this section shall be the penalties as set out in Article Two Section XLVI of this Ordinance. In addition, licensees violating this section shall be subject to appropriate alcoholic beverage control administrative remedies.

SECTION (XXVIII) APPROVAL OR DENIAL OF APPLICATION

- A. If upon review of the application, the MABC may approve the application if the MABC determines that:
 - a. The applicant has complied with all requirements of the State Alcoholic Beverage Control Law, as well as all regulatory provisions of this Ordinance;
 - b. The location is one that can be approved, including but not limited to the requirements of KRS 243.220 and 243.450;
 - c. A license may be issued within the quota limits fixed by the State Alcoholic Beverage Control Board, and
 - d. There are no other causes for denial of the license.
- B. If the MABC has reasonable grounds to believe that an applicant has violated any law, rule or regulation relating to alcoholic beverages, the MABC may issue to the applicant a written order setting forth such violation and requiring the application to show cause why the requested license should be issued. The MABC shall have the right to order, and the applicant shall have the right to request, an evidentiary hearing to examine the violation set forth in the show cause order issued by the Administrator. Any decision by the Administrator on the application shall be subject to appeal as provided by law.

SECTION (XXIX) PAYMENT OF FEES

The applicant shall pay to the City Clerk the amount of the license fee provided in this ordinance in the form of a certified check, money order or cash at the time the application is filed pursuant hereto. Payment shall be held on deposit by the City pending State license approval and issuance of the City license by the MABC. In the event the application is denied the deposited fee shall, after deduction of a \$50.00 processing fee be returned to the applicant.

SECTION (XXX) POSTING OF LICENSES; PUBLIC RECORD

Each license shall be in substantially the same form prescribed by KRS 243.440 for State licenses, and shall be posted at the licensed premises in the same manner prescribed by KRS 243.620 for State licenses. An exact duplicate or facsimile of each City license shall remain in the MABC's office as part of the public record. 244.360 Alcoholic beverage retailer to have name and license number on window. All alcoholic beverage retailers shall have printed on the front window of the licensed premises the name and licensee together with the inscription: "Kentucky Retail Package Liquor License No. ..." in uniform letters not less than three (3) inches in height. City license must also conform herewith and be posted as set forth in KRS 244.360 which is incorporated herein by reference."

SECTION (XXXI) LICENSE TO BECOME VOID IF BUSINESS DORMANT;
LICENSE RENEWAL

- A. Under the provisions of the Kentucky Revised Statutes, all administrative regulations promulgated pursuant to the provisions of the Kentucky Revised Statutes, and this ordinance, as they may be amended from time to time, a quota system may exist for the number of licenses to sell alcoholic beverages in the City. Therefore, it is necessary that a licensee actually conduct the business authorized by the license or else the license will be declared dormant and become null and void after ninety (90) days. Because a licensee, like any other business, may suffer an interruption of business by situations not under the licensee's control, various exceptions to this dormancy rule are included in subsection (B).
- 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) days period the license shall be surrendered to the MABC except that any licensee who is unable to continue in business at the licensed premises may apply to the State Alcoholic Beverage Control Department, pursuant to 804 KAR 4:110 as amended from time to time, to continue such license in dormancy. In the event a period of dormancy is applied for or granted by the State, to the licensee, the licensee shall immediately notify the MABC. Upon resumption of business or transfer or assignment of the license, the licensee shall notify the MABC and a fee shall be due and payable to the MABC for the period and license was in dormancy in the same amount due had the license remained active for the same period.
- C. Applications approved by MABC and based on pending construction or development on the premises shall be null and void after ninety (90) days of the commitment to issue a license if the applicant fails to proceed in an orderly fashion to initiate construction or development on the premises involved. Extensions may be granted by the MABC as he or she deems appropriate in exercise of sound discretion based on facts and circumstances surrounding each request.
- D. Applications for renewal of licenses and payment of the license fee must be on file with the MABC at least fifteen (15) days but not more than forty five (45) days, before the expiration of the licenses for the preceding license

period, or the license shall be cancelled. However, the licensee may file a written, verified statement of least fifteen (15) days prior to the expiration date of the license, setting forth facts justifying an extension. The MABC may then extend the time for filing an application for renewal of the license for a reasonable length of time within the exercise of his or her sound discretion. The licensee shall pay the license fee from the expiration date of the former license or licenses and payment shall be refunded to the licensee in the event that the license or licenses are not renewed at or before the end of the extension period.

E. SECTION (XXXII) CAUSES FOR REFUSAL TO ISSUE OR RENEW LICENSE, SUSPENSION OR REVOCATION OF LICENSE

- A. Causes for refusal to issue or renew a City 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 alcoholic beverage licensing sales, the administration of licenses or a licensee allowing conduct on the licenses premises which is prohibited by this Ordinance.
- B. No license to sell alcoholic beverages shall be granted or renewed to any person or other entity delinquent in the payment of any taxes or fees due the City at the time of issuing the license; nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee, upon which there are any delinquent taxes or fees due the City. If a licensee becomes delinquent in the payment of any taxes or fees due the City at any time during the license period, the license to sell alcoholic beverages shall be subject to revocation or suspension. The MABC may in his or her discretion, approve a license to sell after receiving from the City Clerk, a written statement to the effect that the applicant for the license has paid the indebtedness represented by the unpaid and delinquent taxes or fees. This section shall apply only to taxes and fees which are due and payable by the licensee.
- C. No retail package liquor license shall be issued for any premises unless the applicant certifies under oath that ninety percent (90%) of the total projected gross receipts from sale made at the licensed premises during the twelve (12) month period following the issuance of the license shall consist of the projected gross receipts from sales of alcoholic beverages. No retail package liquor shall be renewed for any premises unless ninety percent (90%) of its gross receipts from sales for the immediate past month and the immediate past twelve (12) months have been derived from the sale of alcoholic beverages.
- D. Appeals may be taken from decisions of the MABC to the State Alcoholic Beverage Control Board according to the provisions of KRS 241.200 and 243.550.

SECTION (XXXIII) LICENSE REQUIRED FOR SALE

OF ALCOHOLIC BEVERAGES

No person shall sell or dispense at retail or have in his possession for sale, any alcoholic beverages, nor manufacture or transport any alcoholic beverages in the City unless first procuring a license under the provisions of this Ordinance, all State statutes, and all regulations adopted pursuant thereto. This ordinance and those statutes and regulations shall be hereinafter singularly and collectively referred to as the alcoholic beverage control law. The revocation, suspension, non-renewal or other action which obviates the State license shall also operate to invalidate the corresponding City license.

SECTION (XXXIV) HOURS OF SALE

- A.** Premises for which there has been granted a license for the sale at retail of malt beverages, distilled spirits and wine by the package shall be permitted to remain open during the hours of 6:00 a.m. to 12:00 midnight, but shall remain closed during the twenty-four (24) hours of Sundays, Christmas, Easter Sunday and at any time when the election polls are open in the precinct in which the licensee's business is located. This restriction is expressly subject to Section B below.
- B.** Premises for which there has been granted a license for retail sales of alcoholic beverages by the drink shall be permitted to remain open between the hours of 6:00 a.m. and 12:00 midnight, but shall be closed during the twenty-four (24) hours of Christmas, Easter Sunday and at any time when the election polls are open in the precinct in which the licensee's business is located. However, if the licensee provides a separate department within the licensed premises capable of being locked and closed off, within which is kept all stocks of alcoholic beverages, and if the department is kept locked during the aforesaid time the licensee is permitted to remain open for other retail purposes but not to sell alcoholic beverages.
- C.** Premises for which a malt beverage license has been issued shall be permitted to remain open during the periods such sales are prohibited if all iced or chilled malt beverages are locked up and/or un-chilled malt beverages are property placarded indicating that the sale of such goods is prohibited during said hours of operation set forth above.
- D.** Any licensee for sales of alcoholic beverages by the drink or package who violates the preceding section shall be deemed guilty of a misdemeanor, shall be punished in accordance with the provisions of this ordinance, and the license shall be subject to revocation or suspension within the discretion of the MABC.
- E.** During the time a licensee's business is actually closed, the premises of any licensee for the sale of alcoholic beverages by the drink or package must be closed to and vacant of all customers and all persons except the licensee and employees, who shall be allowed on the premises for business purposed only. Alcoholic beverages shall not be sold, given away, delivered or consumed by anyone in any room of the premises during the

closed hours and no parties, private or public shall be held on the premises. The premises shall not be loaned, rented or leased to anyone during closed hours for a party or for any other purposes.

- F. Wholesalers shall not deliver alcoholic beverages on Sunday.

**SECTION (XXXV) EXCEPTIONS TO MANDATORY CLOSING TIMES;
REQUIREMENTS**

- A. A licensee of a premises holding a Hotel/Motel/Inn drink license; or a licensee of a premises holding a restaurant drink license, or a licensee of a premises holding a restaurant wine license shall be allowed to remain open during hours when the sale of alcoholic beverages is prohibited for the sole purpose of providing food services to the public. However, all stocks of alcoholic beverages shall be locked and closed off from the public during said time period.
- B. A licensee of a premises holding a hotel/motel/inn drink license; or a licensee of a premises holding a restaurant drink license; a licensee of a premises holding a restaurant wine license; and a licensee of a premises holding a packaged liquor license shall be allowed to sell alcoholic beverages on New Year's Eve (December 31) from 6:00 a.m. until 2:00 a.m. on January 1, regardless of the day of the week on which New Year's Eve occurs, provided that the appropriate licenses have been obtained from both the City and State.

**SECTION (XXXVI) CONFISCATION AUTHORIZED
IF VIOLATIONS OCCUR**

If any alcoholic beverages are found on the outside of the locked or closed-off department of any licensed premises at any hours during which the licensee is prohibited by the State law or by this Ordinance from selling alcoholic beverages, a prima facie presumption shall arise that such alcoholic beverages were kept outside the locked or closed-off section for the purpose of sale in violation of this Ordinance and the State law, and shall be grounds for revocation or suspension of the license. In addition to other penalties provided for the violation of this Ordinance, the MABC is hereby authorized to confiscate the alcoholic beverages.

SECTION (XXXVII) ADVERTISING RESTRICTIONS

There are no advertising restrictions imposed by this Ordinance. Businesses and licensees remain subject to all other City ordinances.

**SECTION (XXXVIII) RETAIL SALES TO
CERTAIN PERSONS PROHIBITED**

No retail licensee shall sell, give away or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away or delivered to a person known to the seller or server to be:

- A. A minor, except that in any action against a licensee for selling alcoholic beverages to minor it is an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents, and that the appearance and character of the purchaser were such that his or her age could not have been ascertained by any other means and that the purchasers appearance and character indicated strongly that he or she was of legal age to purchase alcoholic beverages. The evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.
- B. A person actually or apparently under the influence of alcoholic beverages.
- C. A habitual drunkard or any person convicted of drunkenness as many as three (3) Times within the most recent twelve (12) month period.
- D. Anyone known to the seller to have been convicted of driving under the influence of an intoxicant or any other misdemeanor attributed directly or indirectly to the use of alcoholic beverages, or of a felony within the preceding twelve (12) months.

SECTION (XXXIX) MINOR NOT TO POSSESS OR PURCHASE ALCOHOLIC BEVERAGES NOR TO MISREPRESENT AGE: USE OF FRAUDULENT IDENTIFICATION

- A. As used in KRS 244.083 and this section "premises" means the place of business of a person licensed To sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- B. With regard to persons under 21 years of age:
 - a. Except as herein provided, no person under 21 years of age shall enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
 - b. No person holding any license for on-premises consumption of distilled spirits and wine or a license for retail malt beverage sales, or any clerk, servant, agent or employee thereof shall permit any person under the age of twenty one (21) years on the licensed premises unless such premises is a restaurant, grocery store, hotel, private club, or upon the premises for a temporary licensed event, including plays or bona fide concerts. In such exempted premises, persons under the age of twenty one (21) years of age shall not enter the bar room area.
 - c. Minors not accompanied by a parent or legal guardian shall not remain on a licensed premises classified herein as a restaurant after the hour of 10:00 p.m. unless the minor remains only in the designated restaurant area which is clearly separated from both the bar room area and any area provided for dancing.
 - d. The prohibitions set forth in subsection (a.) (b.) and (c.) shall not apply to persons under the age of twenty one (21) who are working

on the premises, either as an employee or an independent contractor, which persons may enter and remain on said premises while they are working and at no other time.

- C. A licensee or any of his or her clerks, servants, agents, or employees is guilty of permitting the unlawful possession or consumption of alcoholic beverages on a licensed premises when he or she:
 - a. Owns, occupies, maintains, controls, leases, or exercises control or ownership of real estate, including but not limited to the buildings and other structures located thereon, and permits any person under the age of twenty-one (21) to possess or consume any alcoholic beverage on the premises; or
 - b. Owns, occupies, maintains, controls, leases, or exercises control or ownership of real estate, including but not limited to the buildings and other structures located thereon, and allows or permits any person under the age of twenty one (21) years to remain on the premises while that person possesses or consumes any alcoholic beverage.
- D. In the event a violation occurs under the provisions of this section, the MABC shall forthwith conduct a hearing pursuant to KRS 243.520 (in conjunction with 241.160 and 241.190), to determine whether the licensee, at whose business establishment the prohibited activity occurred, may have such license suspended or revoked. In the event three (3) or more violations under the provisions of this section occur at a business establishment within a twelve (12) month period, the MABC, after a hearing, shall suspend or revoke said license.
- E. No person under twenty one (21) years of age shall possess for his or her own use, or purchase or attempt to purchase or have another purchase for him or her, any alcoholic beverages. No person shall aid or assist any person under twenty one (21) years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- F. No person under twenty one (21) years of age shall misrepresent his or her age for the purpose of inducing any licensee or other employee of any licensee to sell or serve any alcoholic beverages to such person.
- G. No person under twenty one (21) years of age shall use, or attempt to use, any false, or fraudulent, or altered identification card or paper, or any other document, to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

SECTION (XL) LICENSEE TO DISPLAY NOTICE
REGARDING SALE TO MINORS

Every retail licensee shall display at all times in a prominent place a printed card at least eight (8) inches by eleven (11) inches in size which shall show, in thirty (30) point or larger type, substantially as follows: Persons under the age of twenty one (21) are subject to a fine up to one hundred dollars(\$100.00) if they:

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

SECTION (XLI) REGULATORY LICENSE FEE

Pursuant to KRS 243.075, there is hereby imposed a regulatory license fee on the gross receipts of sale of alcoholic beverages of each license issued by the City ABC Administrator. As of the time of adoption of this ordinance, the regulatory license fee shall be six percent (6%) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the regulatory license fee shall be five percent (5%) of gross sales. The regulatory license fee shall be four (4%) on gross retail sales of package malt beverages. Thereafter, the City Council shall adopt at the budget adoption for each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the City. Should the City fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed until such time as the City Council shall adjust the fee.

SECTION (XLII) PAYMENT

Payment of the regulatory license fee by all licenses shall be quarterly and shall accompany quarterly tax returns setting forth all package sales, retail food and drink sales for the immediately preceding quarter which must be approved by the MABC and the City Clerk. The return shall be submitted to the MABC by the twentieth day of each month following the end of each quarter, as set forth herein; for the preceding quarter's sales of all food sales, package sales and drink sales on the premises.

SECTION (XLIII) FAILURE TO PAY

Failure to pay the quarterly remittance within ten (10) days after the due date shall constitute a violation of this ordinance and will subject the licensee to suspension or revocation of the license. Any licensee who suffers a revocation of a license grant pursuant hereto shall not be deemed qualified to obtain a license in the future.

SECTION (XLIV) ADEQUATE RECORD KEEPING REQUIRED

Every licensee shall keep and maintain 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 State Alcoholic Beverage Control Board, or such rules

and regulations as may be from time to time promulgated by the MABC. Where the sales of alcoholic beverages as the relate to other sales are determinative of the licensee's eligibility to retain a license, the licensee shall maintain adequate records to show that relationship. The books and records shall be available at all reasonable times for inspection by the MABC, the City Auditor, or any authorized representatives.

SECTION (XLV) PENALTY FOR NONPAYMENT

If the holder of any license shall fail to pay the regulatory license fee imposed by this Section within ten (10) days of the due date, an automatic penalty of fifty dollars (\$50.00) shall be assessed for the first offense, an automatic penalty of one hundred dollars (\$100.00) shall be assessed on the second offense, and an automatic penalty of two hundred dollars (\$200.00) shall be assessed on the third offense. In addition to the monetary penalty, the MABC may hold a hearing for a second and third offense requiring the licensee to show cause why the license should not be suspended or revoked with full authority to do so upon appropriate findings. The calculation of the number of offenses for the purpose on invoking the above penalties shall be done on a twelve (12) month basis, with the number of offenses being reduced to zero at the beginning of each new license period.

SECTION (XLVI) INFRACTION CONSTITUTES A MISDEMEANOR

A. Any person who violates any provision of this ordinance for which no specific penalty is otherwise provided shall be guilty of a misdemeanor and shall, in addition to other penalties provided by law, be subject to the following penalties:

- a. For the first offense a fine not to exceed two hundred fifty dollars (\$250.00).
- b. For any subsequent offense a fine not to exceed less than five hundred dollars (\$500.00) or confinement in jail not more than six (6) months, or both.
- c. Any proceeding for the revocation of any license issued hereunder shall be governed in accordance with the provisions of KRS 243.480.

B. In addition to any other penalty provided for herein, any licensee violating any provision of this Ordinance shall be subject to suspension or revocation of such license, subsequent to a hearing before the MABC.

EFFECTIVE DATE SECTION (XLVII) SEVERABILITY AND INTERPRETATION

The provisions of this Ordinance are severable, and the declaration by a Court of competent jurisdiction of the invalidity of any provision hereof shall not affect the validity of any other provision. The headings and captions contained in this Ordinance are solely for ease of use and reference, do not constitute a part of substance of this Ordinance, and shall not be used in the interpretation of any provision of this Ordinance.

**SECTION (XLVIII) EFFECTIVE DATE: PUBLICATION AND READING BY
SUMMARY**

- A. This Ordinance shall become effective upon its passage, approval and publication as required by law. However, such effective date shall not operate to change the date upon which prohibition ceases to be in effect in the City pursuant to the local option election held on June 21, 2011.
- B. In accordance with KRS 83A.060, the reading and/or publication of this Ordinance may be made by an Ordinance Summary prepared by the City Attorney.

APPENDIX A:

Example 1:

NOTICE TO MINORS. EXAMPLE OF TYPE

PERSONS UNDER THE AGE OF TWNETY ONE (21) ARE SUBJECT TO A

FINE UP TO ONE HUNDRED DOLLARS (\$100.00) IF THEY:

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

Example 2:

IF YOU ARE UNDER 21 YEARS OLD, YOU CAN BE FINED UP TO \$100.00 IF YOU:

- Go into a business which sells alcoholic beverages for the purpose of buying any alcoholic beverages
- Actually purchase, attempt to purchase, or posses any alcoholic beverage
- Attempt or actually have someone obtain and alcoholic beverage for you
- Misrepresent your age in order to purchase or obtain an alcoholic beverage

MANDATORY BEVERAGE TRAINING

- (a) All persons employed in the selling and serving of alcoholic beverages shall participate in STAR training program.
- (b) All persons required to complete training under paragraph (a) above shall complete that training within sixty (60) days of the date on which the person first becomes subject to the training requirement. All persons completing the training required by this section shall be re-certified in STAR training not less than once every three (3) years thereafter.

This ordinance shall become effective upon publication. Ordinance # 2011-005.

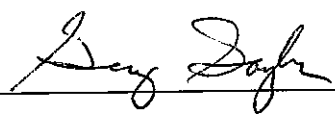
BE IT SO ORDAINED BY THE CITY OF MANCHESTER on this 28th day of July, 2011.


ATTEST:	YEAS	NAYS
Mark Deaton	X	_____
Harvey Hensley	_____	absent
John Ed Pennington	_____	absent
Betty Meredith	X	_____
Penny Robinson	_____	absent
Fred Rogers	X	_____
Dorothy Sizemore	X	_____
Terry Wilson	X	_____

Date: July 15, 2011
(First reading)

Date: July 28, 2011
(Second reading)

Date: August 4, 2011
(Adopted)

 _____, Mayor

 _____, City Clerk

