

**CITY OF OAK GROVE, KENTUCKY  
ORDINANCE 2013-08**

**AN ORDINANCE BY THE CITY OF OAK GROVE, KENTUCKY  
ESTABLISHING REGULATIONS FOR SALE OR THE SERVING OF  
ALCOHOLIC BEVERAGES LOCATED WITHIN THE CITY.**

**WHEREAS**, on December 18, 2001, the City of Oak Grove established regulations for the sale of alcoholic beverages and amended said ordinance from time to time thereafter; and

**WHEREAS**, during the 2013 Legislative session Senate Bill 13 was passed mandating major changes to state forms, state and local license types, procedures, fees and renewal schedules; as well as changes to statutes governing election day sales, local option election laws, public safety and protection provisions, and the three-tier system protections relating to Micro-Breweries by June 25, 2013.

**WHEREAS**, the City of Oak Grove wishes to comply with Kentucky Revised Statute Chapters 241, 242, 243, 244 and 245 and changes imposed by Senate Bill 13; and

**NOW THEREFORE, BE IT ORDAINED BY THE CITY OF OAK GROVE, KENTUCKY AS FOLLOWS:**

**SECTION 1 – DEFINITIONS**

As used in this chapter and in KRS Chapters 242 and 243, unless the context requires otherwise:

- (A) “Alcohol” means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.
- (B) “Alcoholic Beverage” means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
1. Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
  2. Patented, patent, and proprietary medicines;
  3. Toilet, medicinal, and antiseptic preparations and solutions;
  4. Flavoring extracts and syrups;
  5. Denatured alcohol or denatured rum;
  6. Vinegar and preserved sweet cider;
  7. Wine for sacramental purposes; and
  8. Alcohol unfit for beverage purposes that is to be sold for legitimate external use;
- (C) “Board” means the State Alcoholic Beverage Control Board created by KRS 241.030
- (D) “Bottle” means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;

(E) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either alone or through an agent;

(F) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept;

(G) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;

(H) "Charitable Organization" means a nonprofit entity recognized as exempt from Federal taxation under section 501(c) of the internal revenue code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes;

(I) "City Administrator" means city alcoholic beverage control administrator

(J) "Convention Center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;

(K) "Convicted" and "Conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;

(L) "Department" means the Department of Alcoholic Beverage Control;

(M) "Distilled Spirits" or "Spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;

(N) "Hotel" means a hotel, motel, or inn for accommodation of the traveling public, designed primarily to serve transient patrons;

(O) "Limited Restaurant" means:

1. A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons for dining, and which is located in a wet or moist territory under KRS 242.1244(2); or

2. A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a wet or moist territory under KRS 242.1244;

(P) "Malt Beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt;

(Q) "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or track of land, in the same or in different buildings if physical or permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998 shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license;

(R) "Private Club" means a nonprofit social, fraternal, military, or political organization, club or entity maintaining or operating a club room, club rooms, or premises from which the general public is excluded;

(S) "Public Nuisance" means a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons;

(T) "Restaurant" means a public facility where the usual and customary business is the serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and beverage receipts from the sale of food;

(U) "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant or employee, of any alcoholic beverage;

(V) "Service Bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guests or patrons are prohibited;

## **SECTION 2 - INCORPORATION OF STATE LAW; COMPLIANCE REQUIRED**

(A) The provisions of the State Alcoholic Beverage Control laws contained in KRS Chapters 241, 242, 243, 244, and 245 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, except as otherwise lawfully provided herein.

(B) 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 of the provisions of KRS Chapters 241, 242, 243, 244 and 245 and all statutes, regulations and ordinance applicable thereto.

(C) All prohibitions, restrictions and regulations pertaining to alcoholic beverages found in Kentucky Revised Statutes Chapters 241, 242, 243, 244 and 245 shall apply to alcoholic beverage use in the City.

## **SECTION 3- SCOPE OF COVERAGE**

(A) This section shall be construed to apply to the traffic in Malt Beverage, distilled spirits and wine where the context permits such applications.

(B) Nothing contained in this section 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 regulations of the city or of any statutes of the state relating to violations pertaining to alcoholic beverages.

#### SECTION 4 - LICENSES; FEES

The City shall have the power and authority to issue the following kinds of licenses upon proper application and the payment of prescribed fee(s):

(A) NQ-1 Retail Drink License, per annum (Combo License/Convention Cntr only)	\$800.00
(B) NQ-2 Restaurant and Motel, per annum (Combo License)	\$210.00
(C) NQ-3 Special Private Club License, per annum (Combo License)	\$315.00
(D) NQ-4 Retail Malt Beverage Drink License, per annum (Malt Beverage only)	\$210.00
(E) NQ Retail Malt Beverage Package License, per annum	\$210.00
(F) Quota Retail Package, per annum (Distilled Spirits/Wine)	\$630.00
(G) Quota Retail Drink License, per annum (Distilled Spirits/Wine)	\$630.00
(H) Special Temporary License, per event (Combo License)	\$105.00
(I) Special Sunday Retail Drink License, per annum	\$105.00
(L) Supplemental Bar License, per annum (Up to 5, no charge additional)	\$210.00
(M) Malt Beverage Brew-on premises License, Per Annum	\$50.00
(N) Malt Beverage Brewers License, Per Annum	\$250.00

#### SECTION 5 - PRORATION; REFUNDS PROHIBITED

(A) All licenses issued by the City, except special event or temporary licenses, shall be valid for a period of no more than a year.

(B) When any person applies for a new license authorized to be issued under KRS 243.020 to 243.670, he shall be charged, if the license is issued, the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.

(C) The renewal by the City of the certificate or permit of any alcoholic beverage license shall not be construed to waive or condone any violation that occurred prior to the renewal and shall not prevent subsequent proceedings against the licensee. In the event any licensee shall cease doing business for any reason, no refund of the City license fee shall be granted to licensee.

(D) In the event the licensed organization is funded through local public tax dollars, local licensure fees will be waived.

#### SECTION 6 - TIMES WHEN SALES PERMITTED

(A) A Licensee under this section may sell alcoholic beverages, or do any act authorized by the licensee's license with respect to the sale of alcoholic beverages only during the times hereinafter set out.

(B) Premises for which there has been granted a license for the sale of alcoholic beverages shall be permitted to remain open during the hours of 6:00 a.m. to 3:00 a.m.

(C) During the closing hours, the premises of any licensee for the sale of alcoholic beverages by the drink must be closed to and vacant of all customers and all persons except the licensee and his/her employees, who shall be allowed on the premises for business purposes only. Alcoholic beverages shall not be sold, given away, delivered or consumed by anyone in any room of the premises during the closing 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 closing hours for a party or for any other purposes.

(D) Any licensee for sales of alcoholic beverages who remains open for business at any time except the hours permitted under this Section shall be deemed guilty of a misdemeanor and 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 ABC Administrator.

#### **SECTION 7- DEPOSIT OF FEES, FINES TO GENERAL FUNDS**

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

#### **SECTION 8- ALCOHOLIC BEVERAGE CONTROL ADMINISTRATORS ESTABLISHED**

There is hereby established the office of Alcoholic Beverage Control ("ABC") Administrator and Deputy ABC Administrator as set out in this ordinance.

#### **SECTION 9- ABC ADMINISTRATOR TO ENFORCE**

The ABC Administrator or Deputy ABC Administrator shall have the power and authority to promulgate such regulations as may be necessary to implement and/or administer this chapter.

#### **SECTION 10- FUNCTIONS; DUTIES AND POWERS**

(A) The functions of the ABC Administrator or Deputy ABC Administrator shall be the same with respect to the City license and regulations, as the function of the Kentucky Alcoholic Beverage Control Board ("Board") with respect to state licenses and regulations, except that no regulation of the ABC Administrator shall be less stringent than the statutes relating to alcoholic beverage control, or the regulations of the Board.

(B) The ABC Administrator or Deputy ABC Administrator 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 ABC

Administrator or Deputy ABC Administrator, on his own initiative or on the complaint of any person, may institute proceedings to revoke or suspend any license issued under this chapter.

#### **SECTION 11- POLICE POWER; ABC ADMINISTRATOR OR DEPUTY ABC ADMINISTRATOR TO HAVE**

The ABC Administrator, Deputy ABC Administrator and his investigators, shall have 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 12- RIGHT OF INSPECTION**

The ABC Administrator or their designee shall have available at all reasonable times for his/her inspection, all books and records required to be maintained by licensees under KRS 244.150 and shall receive copies of all reports submitted by licensees to the State Alcoholic Beverage Control Board.

#### **SECTION 13- ALL LICENSES REQUIRED**

License fees in the amounts herein provided shall be charged for each location in which any person engages in any classification of business authorized under this section, and if more than one classification of business is conducted at any location, a license shall be charged for each of the privileges exercised.

#### **SECTION 14- ASSIGNMENTS AND TRANSFERS**

The assignment, transfer, pledge or hypothecation of City licenses shall be governed by the provisions of KRS 243.630 and 243.660.

#### **SECTION 15- LOCATION OF BUSINESS RESTRICTED**

Licenses under this chapter shall not authorize the conduct of business in any place other than that specifically described in the original, state application and license. Any additional building(s) or room(s) attached to licensed premises and requiring separate service bars shall require an additional city license.

#### **SECTION 16- APPLICATION; CONTENTS**

An applicant for a license under this chapter shall file with ABC Administrator or Deputy ABC Administrator a copy of his state license application containing the information required by KRS 243.380 and 243.390; as well as a City application. The City application shall include the consent of the applicant permitting the ABC Administrator or Deputy ABC Administrator to inspect and search the licensed premises at any reasonable time, to confiscate articles found on the premises in violation of any ordinance or statute, and to order an emergency temporary closure of the premises if the public health, welfare, safety and morals 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 ABC

Administrator or Deputy ABC Administrator within thirty-six (36) hours.

#### **SECTION 17- APPROVAL OR DENIAL OF APPLICATION**

(A) If upon review of the application, the ABC Administrator or Deputy ABC Administrator determines that the applicant has complied with all requirements of the Alcoholic Beverage Control Law, as well as all regulatory provisions of this chapter, that the location is one that can be approved, including but not limited to the requirements of KRS 243.220, that a license may be issued within the quota limits, and that there is no other cause for denial of the license, the ABC Administrator or Deputy ABC Administrator shall approve the application.

(B) If the ABC Administrator or Deputy ABC Administrator has reasonable grounds to believe that an applicant has violated any law, rule or regulation relating to alcoholic beverages, he may issue to the applicant a written order setting forth such violation(s) and requiring the applicant to show cause why the requested license should be issued. The ABC Administrator or Deputy ABC Administrator 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 ABC Administrator or Deputy ABC Administrator. Any decision by the ABC Administrator or Deputy ABC Administrator on the application shall be subject to appeal as provided by law.

#### **SECTION 18- LICENSE RENEWAL**

All renewal of licenses and payment of the license fee must be on file with the ABC Administrator thirty (30) days before the expiration of the licenses for the preceding license period or the license shall be canceled, except that the licensee may file a written, verified statement thirty (30) days prior to the expiration date of the license, setting forth the facts justifying an extension. The ABC Administrator may then extend the time for filing of a renewal of the license for a reasonable length of time within the exercise of his/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.

#### **SECTION 19 - CAUSES FOR REFUSAL TO ISSUE OR RENEW LICENSE; SUSPENSION OR REVOCATION OF LICENSE**

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

(B) No license to sell alcoholic 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 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 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. The ABC Administrator may, in his/her discretion, approve a license

to sell after receiving from the City Finance Director, a written statement to the effect that the applicant for the license has paid or has made satisfactory arrangements with the City Finance Director for taking care of 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) Appeals may be taken from decisions of the ABC Administrator to the State Alcoholic Beverage Control Board according to the provisions of KRS 241.200 and 243.550.

#### **SECTION 20- PAYMENT OF FEES**

Upon approval of the application by the ABC Administrator or Deputy ABC Administrator, the applicant shall pay the amount of the license fee(s) provided in this chapter.

#### **SECTION 21- POSTING OF LICENSES; PUBLIC RECORD**

Each City license in the same form prescribed by KRS 243.440 for state licenses shall be posted at the licensed premises in the same manner prescribed by KRS 243.620. An exact duplicate facsimile of each City license shall remain in the ABC Administrators or Deputy ABC Administrators office as part of the public record.

#### **SECTION 22 – 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 Alcoholic Beverage Control Act or by this ordinance from selling alcoholic or malt beverages, except as provided in Section 30 (C), a prima facie presumption shall arise that such alcoholic or malt beverages were kept outside the locked or closed-off section for the purpose of sale in violation of this chapter and the State Alcoholic Beverage Control Act and shall be ground for revocation or suspension of the license. In addition to other penalties provided for the violation of this ordinance, the ABC Administrator is hereby authorized to confiscate the alcoholic or malt beverages.

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

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

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

(D) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130 or any regulation promulgated pursuant to KRS 244.130.

#### **SECTION 23 – REGULATORY LICENSE FEE IMPOSED**

(A) A regulatory license fee is imposed on the gross receipts from retail sales of



alcoholic beverages under each license issued for the purpose of insuring full reimbursement to the City for the cost of additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the City. The City Council shall adopt, at the budget adoption for the fiscal year, an annual rate for the regulatory license fee as shall be reasonably estimated to insure full, reimbursement to the City for the cost of additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit shall be allowed in an amount equal to the cost of the license under the provisions of this chapter.

(B) The regulatory license fee shall be Three Percent (3%) for the fiscal year, beginning and continuing thereafter until amended or repealed.

(C) Payment of such fee shall accompany tax returns approved for use by the City Finance Director and a majority of the City Council. The return shall be submitted to the City Finance Director by the thirtieth (30<sup>th</sup>) day of each month for the preceding month's sales. The fraction, represented by one divided by the number of months for which the city license was issued, of the fee required under the provisions of this chapter shall be deducted each month as a credit.

#### SECTION 24 - PENALTY FOR NONPAYMENT

(A) 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 and 00/100 Dollars (\$50.00) shall be assessed for the first offense. An automatic penalty of One Hundred and 00/100 Dollars (\$100.00) shall be assessed on the second offense, and an automatic penalty of Two Hundred and 00/100 Dollars (\$200.00) shall be assessed on the third offense. In addition to the monetary penalty, ABC Administrator shall 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 of 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.

(B) Interest shall be assessed upon any past due payments at the rate of twelve (12) percent per annum.

#### SECTION 25 - MANDATORY TRAINING

(A) Any alcoholic beverage licensee's employee who is presently actively engaged in the sale of alcoholic beverages at retail will attend Server Training in Alcohol Regulations (STAR) as taught by trained State of Kentucky ABC instructors, or any other training as accepted or provided by the local ABC Administrator. All subsequent employees of any alcoholic beverage licensee will attend training within ninety days of employment by the licensee.

(B) Any alcoholic beverage licensee that fails to provide Server Training in Alcohol Regulations (STAR) or any other training as accepted or provided by the local ABC Administrator for any or all of their employees who are presently actively engaged in the sale of

alcoholic beverages at retail will be held in violation of this Ordinance which could result in suspension or revocation of their City of Oak Grove alcoholic beverage license.

#### SECTION 26 – ADEQUATE RECORDKEEPING 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 ABC Administrator and approved by a majority of the City Council. Where the sales of alcoholic beverages as they 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 ABC Administrator, the City Finance Director, or any authorized representatives.

#### SECTION 27 – UNCONSTITUTIONALITY


Any and all existing ordinances inconsistent with this ordinance are hereby repealed. Should any part of this ordinance be void or unconstitutional, the remaining ordinance shall remain in full force and effect.

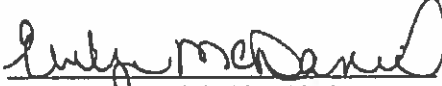
Approved on First Reading this 17<sup>th</sup> day of September, 2013

Approved on second reading this 29<sup>th</sup> day of October, 2013

APPROVED:

ATTEST:

  
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Dan Potter, Mayor  
City of Oak Grove, Kentucky

  
\_\_\_\_\_  
Evelyn McDaniel, City Clerk  
City of Oak Grove, Kentucky

*PUBLISHED: In the Kentucky New Era, the 8<sup>th</sup> day of November, 2013.*

