

CITY OF HURSTBOURNE ACRES, KENTUCKY

ORDINANCE 4, SERIES 2013

AN ORDINANCE RELATING TO THE REGULATION OF ALCOHOLIC BEVERAGES IN THE CITY OF HURSTBOURNE ACRES SUMMARY PUBLICATION

Brief narrative:

KRS Chapter 242 gives the Fourth-Class city of Hurstbourne Acres the ability to regulate the sale of alcoholic beverages and the city desires to exercise that authority. The provisions of the Alcoholic Beverage Control Laws and Administrative Regulations of the Commonwealth of Kentucky (KRS Chapters 241, 243, and 244), and all amendments and supplements thereto, are adopted in full, as far as applicable, as a portion of this ordinance except as otherwise lawfully provided herein. The City of Hurstbourne Acres Alcoholic Beverage Control (ABC) Administrator shall administer all Alcoholic Beverage Control Ordinances and regulations of the city and all statutes of the Commonwealth of Kentucky relating thereto and the regulations of the Kentucky Alcoholic Beverage Control Board. The definitions of the words used throughout this ordinance, unless the context requires otherwise, shall have the same meaning as those set out in Kentucky Alcoholic Beverage Control law (KRS Chapters 241, 242, 243 and 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.

The duties, functions, authority, and qualifications required, of the City Alcoholic Beverage Control Administrator are outlined.

The City of Hurstbourne Acres ABC Administrator shall not approve any application for an original license to sell alcoholic beverages until the applicant has caused to be published a concise advertisement in accordance with the provisions of KRS 243.360.

No license to sell alcoholic beverages shall be granted to any person who is delinquent in the payment of any taxes due to the City of Hurstbourne Acres at the time of issuing the license. Nor shall any license be granted to sell on any premises or property, owned and occupied by the licensee, on which there are any delinquent taxes or liens due to the City of Hurstbourne Acres.

If any license issued under this chapter is revoked or cancelled for any reason by the City of Hurstbourne Acres ABC Administrator, the licensee shall forfeit any and all claims, which the licensee might otherwise have had to any portion of the license fee paid by the licensee on the issuing of the license.

No license shall be issued or renewed to any person for selling at retail or wholesale any alcoholic beverages at any premises or location where such business or associated activities are prohibited under Kentucky law, or are in violation or conflict with any regulation, including but not limited to signs, fire prevention and/or the zoning code and regulations of the City of Hurstbourne Acres and any ordinance supplementary or amendatory to it, and any license issued in violation of this section shall be void. However, any person who held a city ABC license for the sale of alcohol, and actually carried on thereunder this business (during or within the last month of the preceding license period) shall be granted a similar license by the City of Hurstbourne Acres ABC Administrator for the same business at the same premises or location, until its prior stated expiration date, at no additional cost.

All licenses granted under this chapter shall be granted subject to certain conditions, and those conditions are described in the ordinance.

Section 7 of the ordinance concerns fees (full text of this Section follows):

All licenses permitted under Kentucky law for a city with a population of the fourth class shall be allowed and all licenses granted under this chapter shall be approved and issued by the City of Hurstbourne Acres ABC Administrator. All license fees from licenses issued under this ordinance shall be collected by the City of Hurstbourne Acres ABC Administrator. There shall be no reimbursement of ABC fees.

All licenses approved by the City of Hurstbourne Acres ABC Administrator and issued by the city shall begin on July 1 of any year and shall expire on June 30 of the following year.

All fees that are imposed by KRS 243.030 and 243.040 are to be paid to the Kentucky ABC. In addition to those fees paid to the Kentucky ABC, any licensee engaged in the sale, possession, or distribution of spirituous, vinous, or malt liquors, or operating a brew-on-premises establishment, shall pay the following fees to the City of Hurstbourne Acres ABC Administrator, which are authorized

under KRS 243.070, and the fees shall be paid when application for a license is made.

Distilled Spirit Licenses as set forth in KRS 243.030

Distiller's License, per annum \$500.00

Rectifier's License, per annum \$3,000.00

Wholesaler's Distilled Spirit and Wine License, per annum \$3,000.00

Quota Retail Package License, per annum \$600.00

Quota Retail Drink License, per annum \$600.00

Special Temporary License, per event \$166.66

Nonquota Type 1 Retail Drink License (includes distilled spirits, wine, and malt beverages), per annum \$2,000.00

Nonquota Type 2 Retail Drink License (includes distilled spirits, wine, and malt beverages), per annum \$1,000.00

Nonquota Type 3 Retail Drink License (includes distilled spirits, wine, and malt beverages), per annum \$300.00

Distilled Spirits and Wine Special Temporary Auction License, per event \$200.00

Special Sunday Retail Drink License, per annum \$300.00

Extended Hours Supplemental License, per annum \$2,000.00

Caterer's License, per annum \$800.00

Bottling House or Bottling House Storage License, per annum \$1,000.00

Malt Beverage Licenses as follows:

Brewer's License, per annum \$500.00

Microbrewery License, per annum \$500.00

Malt Beverage Distributor's License, per annum \$400.00

Nonquota Retail Malt Beverage Package License, per annum \$200.00

Nonquota Type 4 Retail Malt Beverage Drink License, per annum \$200.00

Malt Beverage Brew-On-Premises License, per annum \$100.00

Limited Restaurant License (includes distilled spirits, wine, and malt beverages), per annum \$1,000.00

Limited golf course license (includes distilled spirits, wine, and malt beverages), per annum \$1,200.00

The fee for each of the first five supplemental bar licenses shall be the same as the fee for the primary drink license. There shall be no charge for each supplemental license issued in excess of five to the same licensee at the same premises.

The holder of a nonquota retail malt beverage package license may obtain a

Nonquota type 4 malt beverage drink license for a fee of fifty dollars. The holder of a Nonquota type 4 malt beverage drink license may obtain a nonquota retail malt beverage package license for a fee of fifty dollars.

* Any licenses issued after January 1 of any year shall be assessed a fee equal to one-half (1/2) of the annual fee for the remainder of the license period.

In addition to the above-mentioned fees, a regulatory license fee on gross receipts shall be imposed as follows:

(a) 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. The regulatory license fee shall be five percent (5%) of gross sales of all alcoholic beverages sold by the drink. In the case of retail sales of package distilled spirits and wine, the regulatory license fee shall be five percent (5%) of gross sales. The regulatory license fee shall be five percent (5%) on gross retail sales of package malt beverages. These fees shall be paid quarterly. For year 2013-14 and thereafter, the City 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 shall adjust the fee.

(b) Payment of such regulatory fee shall be remitted to the City of Hurstbourne Acres ABC Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the city for the estimated cost of any additional policing, regulatory or administrative expense 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, except that a credit against a regulatory license fee in the city shall be allowed in an amount equal to any license fee imposed by the city pursuant to KRS 243.070. Payment of the regulatory license fee shall accompany the tax return approved for such use by the City. The return and payment are due no later than by the end of the month immediately following each calendar quarter (July 1 to September 30; October 1 to December 31; January 1 to March 31; April 1 to June 30).

(c) Failure to pay such quarterly remittance within ten (10) days of the due date constitutes a violation and subjects the licensee to suspension or revocation. A civil action may be filed by the City to collect the unpaid fee,

penalties, and interest. If such a civil action is filed, the licensee shall be responsible for the expense of attorney fees and the costs associated with prosecuting the civil action.

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

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

The ordinance describes how a license may be suspended or revoked.

No license issued under this chapter shall be transferred or assigned by the holder, except as provided in the Alcoholic Beverage Control Laws of the Commonwealth of Kentucky, KRS 243.630 and per approval of the City of Hurstbourne Acres ABC Administrator.

The ordinance describes the hours of sale and distribution.

The provisions of KRS Chapter 244 and Title 804 KAR involving prohibitions governing minors shall apply to licensees and licensed premises within the jurisdiction of the City of Hurstbourne Acres.

The ordinance describes requirements for display of printed warnings required by law, advertising, and other sign requirements. Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130. The provisions of KRS 244.050 and KRS 244.083 requiring the display of printed warnings shall apply to licensees and licensed premises within the jurisdiction of the City of Hurstbourne Acres.

Upon the initial application for an alcoholic beverage license, the City of

Hurstbourne Acres ABC Administrator shall not grant the license under this chapter to any applicant until the applicant and the applicant's place of business have been approved by the County Board of Health and the McMahan Fire Protection District. Upon renewal of an alcoholic beverage license, the requirement of approval by the Board of Health and the McMahan Fire Protection District before issuance will be waived if the applicant's business has been approved by the Board of Health and the McMahan Fire Protection District during the prior licensing period.

The ordinance describes the requirements imposed for patio and outdoor sales and for permitting a "sidewalk café", including, but not limited to, insurance requirements.

Seating requirements are also described in the ordinance. Only permanent seating (excluding bar-type stools, patio seating or temporary chairs available as needed) satisfies the seating thresholds that are set by Kentucky law.

The provisions of KRS 244.150 and 804 KAR 4:100 requiring the retention of books and records shall apply to licensees and licensed premises within the jurisdiction of the City of Hurstbourne Acres.

The provisions of KRS Chapter 244 and KAR Title 804, Chapter 7, pertaining to the discovery of spirits outside a locked department shall apply to licensees and licensed premises within the jurisdiction of the City of Hurstbourne Acres.

The provisions of KRS 243.020 pertaining to licensing shall apply to licensees and licensed premises within the jurisdiction of the City of Hurstbourne Acres. Every licensee selling alcoholic beverages by retail sales shall notify each individual employed in retail sales that the sale of alcoholic beverages to any person under the age of 21 years is prohibited. A notice to employees shall be provided before the employee commences work as a retail sales clerk. The employee shall signify receipt of the notice required by this section by signing a form that states as follows: I understand that under the laws of the Commonwealth of Kentucky it is illegal to sell alcoholic beverages to persons under the age of 21 years. The licensee shall maintain the signed

acknowledgment in a place and manner so as to be easily accessible to any Police Officer of the City of Hurstbourne Acres or the City of Hurstbourne Acres ABC Administrator or his or her employees conducting an inspection of the retail outlet for purposes of monitoring compliance in limiting the sale or distribution of alcoholic beverages to persons under the age of 21 years. Every licensee selling alcoholic beverages by retail sales shall notify each employee employed in retail sales that proof of ages is required from a prospective buyer if it is reasonable to believe that the prospective buyer is under the age of 21 years. The types of acceptable identification are described in the ordinance.

Every licensee selling alcoholic beverages by retail sales shall require all employees who will sell alcoholic beverages to a buyer to complete STAR (Server Training in Alcoholic Regulations). All persons who are required to complete the STAR training 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 responsible beverage service training from a program approved by the city not less than once every three years thereafter. The licensee shall be responsible for compliance with the employee STAR training requirements and shall maintain for inspection by the City of Hurstbourne Acres ABC Administrator a record or file on each employee that shall contain the pertinent training information.

The ordinance describes prohibited activity, lighting and sign requirements, restrictions, fines, and enforcement procedures.

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

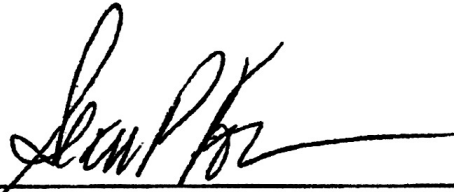
The ordinance describes penalties for violations, notice requirements for violations, and appeal procedures.

This ordinance shall take effect upon its reading, adoption and summary publication according to law.

Adopted this 8th day of August, 2013

Introduction and First Reading: July 11, 2013

Second Reading and Passage: August 8, 2013 _____

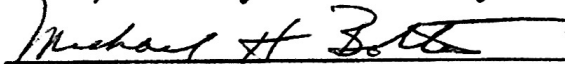


Sean Fore, Mayor

ATTEST:

To be a true Ordinance enacted by the City Commission of the City of
Hurstbourne

Acres, Kentucky on this 8th day of August 2013.



Clerk, City of Hurstbourne Acres, Kentucky

VOTE:

FOR: 4

AGAINST: 1

ABSTAINED: —

PRESENT: —

This summary has been prepared in accordance with KRS 83A.060, by Stephen C. Emery, at attorney licensed to practice law in the Commonwealth of Kentucky. A full text version of this ordinance is available for inspection at City Hall, 1916 Hurstbourne Circle, Louisville, Kentucky 40220.

241.100 Disqualification of board members and employees of department.

- (1) No member of the board or member of his or her immediate family or employee of the department shall have any interest in any premises or business where alcoholic beverages are manufactured, stored or sold. Nor shall he or she receive any commission or profit from any person applying for or receiving any license or permit.
- (2) No person shall be disqualified under this section solely by reason of his or her membership in a club.
- (3) If a member of the board is disqualified or fails to give bond and take the oath of office, the Governor shall fill the vacancy by appointment for the period during which that member of the board remains disqualified or fails to qualify.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 554, effective July 15, 2010. — Amended 1976 Ky. Acts ch. 206, sec. 34. — Amended 1944 Ky. Acts ch. 154, sec. 9. — Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2554b-106.