

**COMMISSIONERS ORDINANCE NO. O-2017-014**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AMENDING CHAPTER 111 OF THE NEWPORT CODE OF ORDINANCES CONCERNING ALCOHOLIC BEVERAGE LICENSES INCLUDING AMENDMENT TO SECTIONS 111.08, 111.26, 111.27, 111.30, 111.31, 111.51, 111.57 AND 111.58.**

BE IT ORDAINED BY THE CITY OF NEWPORT, KENTUCKY:

**SECTION I**

That Chapter 111 shall be amended as follows:

**ALCOHOLIC BEVERAGES**

**§ 111.08 CONSUMPTION OF ALCOHOLIC BEVERAGES BY EMPLOYEES.**

It is unlawful for any employee or independent contractor of an establishment with a distilled spirits, wine, or malt beverages by the drink license to solicit patrons of the establishment to purchase any beverage for consumption by any employee or independent contractor of the establishment with the distilled spirits, wine, or malt beverages by the drink license. The following are exceptions: employees of distillers, rectifiers, and wineries; employees of a licensed brewer; and employees of a microbrewery may sample the products produced by that manufacturer for purposes of education, quality control, and product development.

**§ 111.27 BUSINESS AUTHORIZED BY DISTILLED SPIRIT AND WINE LICENSES.**

(A) A Distiller's license shall authorize the licensee to engage in the business of a distiller at the premises specifically designated in the license, and to transport for himself, only, the alcoholic beverages which he or she is permitted to

manufacture or sell. Class A Distiller's License shall provide for production of greater than 50,000 gallons per year and Class B Distiller's License shall be required for production of 50,000 gallons or less per year. A licensed distiller is permitted to sell retail souvenir package bottles of any distilled spirit produced or bottled at that distillery location or at a different Kentucky licensed distillery of the same company. All souvenir package bottles sold by distillery at retail must be available for sale from a licensed retailer. Distillers are permitted souvenir package sales in quantities not to exceed 4.5 liters per visitor per day. The hours of sale for souvenir packages by distillery are controlled by KRS 244.290 which permits alcohol sales from 6:00 a.m. to 12:00 a.m. midnight, Monday through Saturday, as the state default times.

- (B) A Rectifier's license shall authorize the licensee to engage in the business of a rectifier at the premises specifically designated in the license, and to transport for himself, only, the alcoholic beverages which he or she is permitted to manufacture or sell. The "Class A" Rectifier's license is available to operations that rectify more than 50,000 gallons of distilled spirits per year. The "Class B (craft rectifier)" type is available to operations that rectify 50,000 gallons or less of distilled spirits per year.
- (C) A Wholesaler's license shall authorize the licensee to purchase, receive, store or possess distilled spirits and wines, to sell them at wholesale, from the licensed premises only, and to transport from the licensed premises for himself alcoholic beverages which his or her license authorizes him or her to sell.
- (D) (1) A Non-Quota 2 (NQ-2) Retail Drink license shall authorize the licensee (the

business must be a qualifying restaurant, hotels/motels, [~~or~~] riverboat, distillery,  
or a business located within or adjacent to an entertainment destination center  
licensed premises) to perform the following functions:

(a) Purchase, receive, possess and sell distilled spirits, wines and malt beverages at retail by the drink for consumption on the licensed premises. Such a licensee shall purchase distilled spirits and wines from licensed wholesalers only and unless he or she also holds a retail package license, he or she shall not buy or possess distilled spirits in containers of a capacity smaller than 20 ounces, but mixed drinks may be purchased in containers of a capacity not smaller than 12 ounces. A Non-Quota 2 Retail Drink license shall not authorize the sale of distilled spirits or wines by the package.

(b) A Non-Quota 2 Retail Drink license shall permit the sale of alcoholic beverages from 6:00 a.m. to 1:00 a.m. Monday through Sunday; and no such sale shall be permitted on Sunday unless the licensee holds a Special Sunday Retail Drink license.

(2) Requirements for restaurants, hotels/motels, [~~and~~] riverboats, distilleries,  
and businesses located within or adjacent to an entertainment destination  
center licensed premises applying for a Non-Quota 2 (NQ-2) Retail Drink license are as set forth in KRS 243.084.

(E) (1) "Limited restaurant" as permitted by KRS 243.070(17)(g) and defined by KRS 241.010(35) as:

([1]a) A facility where the usual and customary business is the preparation and

servicing of meals to consumers, which has a bona fide kitchen facility, which receives at least 70% of its [~~gross~~] food and alcoholic beverages receipts from the sale of food, which maintains a minimum seating capacity of 100 persons for dining[, and which is located in a wet or moist territory under KRS 242.1244(2)]; or

(~~[2b]~~) A facility where the usu[~~s~~]al and customary business is the preparation and serving of meals to consumers, which has a bona fide kitchen facility, which receives at least 70% of its [~~gross~~] food and alcoholic beverages receipts from the sale of food, which maintains a minimum seating capacity of 50 persons for dining, which has no open bar, which requires that 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].

(~~[3]2~~) A Limited Restaurant license shall permit the sale of alcoholic beverages from 6:00 a.m. to 1:00 a.m. Monday through Sunday; and no such sale shall be permitted on Sunday unless the licensee holds a Special Sunday Retail Drink license.

(F) (1) A Quota Retail Package license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wines at retail, in unbroken packages only, and only for consumption off the licensed premises between the hours of: 6:00 a.m. and 1:00 a.m. Monday through Saturday; and 11:00 a.m. to 1:00 a.m. on Sunday.

(2) The licensee shall purchase distilled spirits and wines in retail packages only and only from licensed wholesalers.

(3) The licensee may sell only to consumers and may make deliveries only at the premises designated in his or her license.

(G)(1) Any Quota Retail Drink license shall authorize the licensee to purchase, receive, possess and sell distilled spirits and wines at retail by the drink for consumption on the licensed premises. Such a licensee shall purchase distilled spirits and wines from licensed wholesalers only and unless he or she also holds a retail package license, he or she shall not buy or possess distilled spirits in containers of a capacity smaller than 20 ounces, but mixed drinks may be purchased in containers of a capacity not smaller than 12 ounces. A retail drink license shall not authorize the sale of distilled spirits or wines by the package.

(2) A Quota Retail Drink license shall permit the sale of alcoholic beverages from 6:00 a.m. to 1:00 a.m. Monday through Sunday; and no such sale shall be permitted on Sunday unless the licensee holds a "Special Sunday Retail Drink license."

(H) (1) Non-Quota 3 (NQ-3) Retail Drink licenses, may be issued to any [~~licensed distillery or~~] licensed bed and breakfast business or any non-profit social, fraternal, military or political organization or club, which for more than 1 year prior to the date of application has maintained and operated rooms from which the general public is excluded, and shall authorize the licensee to purchase, receive, possess and sell distilled spirits, wines and/or malt beverages at retail by the drink for consumption on the licensed premises by members only. Members shall be defined as those persons having membership in any organization set forth above pursuant to the by-laws thereof.

- (2) The City, including officers of the Newport Police Department, shall be admitted to the rooms for the purpose of making inspections of licenses, the licensed premises and to determine the compliance with all laws, ordinances and regulations pertaining to the sale, use and traffic in alcoholic beverages, without the necessity of a search warrant and the holders of any such licenses, by applying for and receiving the same, expressly waive the requirements of any search warrant for the making of the inspections aforesaid.
- (3) Any Non-Quota 3 (NQ-3) Retail Drink license shall not authorize the sale of distilled spirits, wine and/or malt beverages by the package. In addition to the restrictions and prohibitions provided herein, any rooms provided for hereunder and this section must be separate and apart from any other premises licensed for the sale of malt beverages and distilled spirits and wine.
- (l) (1) A Special Temporary Alcoholic Beverage Auction license may be issued to a charitable or nonprofit organization upon the payment of the fee set forth in § 111.51 and satisfaction of the requirements prescribed by ordinance.
- (2) A Special Temporary Alcoholic Beverage Auction license shall authorize the charitable or nonprofit organization to:
- (a) Purchase, transport, receive, possess, store, sell and deliver malt beverages, distilled spirits and wine to be sold at auction;
  - (b) Obtain malt beverages, distilled spirits and wine from distillers, rectifiers, wineries, breweries, microbreweries, wholesalers, distributors, retailer or any other person by gift or donation, for the purpose of charity auctions; and
  - (c) Receive payment for malt beverages, distilled spirits and wine sold at

auctions.

(3) Each malt beverages, distilled spirits and wine auction conducted by a charitable organization shall be subject to all restrictions and limitations contained in KRS 241 to 244 and the administrative regulations issued under those chapters and shall be authorized only on the dates and only during the hours that the sale of alcoholic beverages is otherwise authorized in the City.

(4) (a) The location at which the malt beverages, distilled spirits and wine are auctioned under this section shall not constitute a public place for the purpose of KRS 222.

(b) Malt beverages, distilled spirits and wine auctions may be conducted on licensed or unlicensed premises.

(c) The charitable or nonprofit organization possessing a Special Temporary Alcoholic Beverage Auction license shall post of the license at the location of the auction. During this period, not more than one auction shall be held.

(5) A Special Temporary Alcoholic Beverage Auction license shall not be issued for any period longer than 30 days. During this period not more than 1 auction shall be held

(6) All restrictions and prohibitions applying to a Quota Retail Package and Quota Retail drink license, not inconsistent with this section, shall apply.

(J) Bottling House License and Bottling House Distilled Spirits License/Wine Storage License shall be as set forth in KRS 243.035.

### **§ 111.30 BUSINESS AUTHORIZED BY SPECIAL TEMPORARY LICENSES.**

(A) All rules and regulations herein incorporated or hereafter adopted by the City

- shall apply to such Special Temporary licensee the same as a regular licensee.
- (B) A Special Temporary license may be issued at the discretion of the City to any appropriate association, organization, club, lodge or fraternal organization or other entity by appropriate application therefore and upon payment of the appropriate fee. The license shall authorize the licensee to sell at retail only, and only from the specifically designated premises, any alcoholic beverages, for a definite period of time, not, however, to exceed 30 days. The requisite license fee for each event shall be assessed for each individual booth on point of sale from which alcoholic beverages are dispensed.
- (C) Due to the time requirement for processing applications on both the state and local level, any applicant who fails to submit a request for a special temporary license at least ten business days prior to the qualifying event, shall be required to pay an additional fee of \$50.

#### § 111.31 BUSINESS AUTHORIZED BY CATERER'S LICENSE.

- (A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.
- CATERER.** A corporation, partnership or individual that operates the business of a food service professional preparing food and beverages in a licensed and inspected commissary, transporting the food and beverages in a location selected by the customer away from the commissary premises and serving the food and beverages to the customer's guests.
- (B) A Caterer's license may be issued as a supplementary license to a caterer that holds a Quota Retail Package or any distilled spirits or wine by the drink retail



license.

- (C) The Caterer's license may be issued to a caterer that does not meet the requirements of division (B) above for the premise that serves as the caterer's commissary. The alcoholic beverage stock of the caterer shall be kept under lock and key at the licensed premises during the time that the alcoholic beverages are not being used in conjunction with a catered function.
- (D) The Caterer's license shall authorize the caterer to:
- (1) Purchase and store alcoholic beverages;
  - (2) Transfer, sell, serve and deliver alcoholic beverages by the drink at locations away from the licensed premises in conjunction with the catering of food and beverages for a customer and his or her guests;
  - (3) Receive and fill telephone orders for alcoholic beverages in conjunction with the ordering of food for a function catered by the licensee; and
  - (4) Receive payment for alcoholic beverages served at a function on a by-the-drink or by-the-function basis. The caterer may bill the host for by-the-function sales of alcoholic beverages in the usual course of the caterer's business.
- (E) A caterer licensee shall not cater alcoholic beverages at locations for which retail alcoholic beverages or special temporary licenses have been issued. A caterer licensee may cater a fundraising event for which a special temporary alcoholic beverage auction license has been issued under KRS 243.036.  
A caterer licensee shall not cater alcoholic beverages at an event hosted by the caterer licensee or hosted as a joint venture of the caterer licensee.
- (F) The location at which alcoholic beverages are sold, served and delivered by a

caterer, pursuant to this section shall not constitute a public place. If the location is a multi-unit structure, only the unit or units at which the function being catered is held shall be excluded from public place provisions.

(G) The caterer licensee shall post a copy of ~~[his or her]~~ the licensee's caterer's license at the location of the function for which alcoholic beverages are catered.

### § 111.51 FEES.

(A) For the privilege of manufacturing and/or trafficking in alcoholic beverages within the City, the following licenses are provided, the fees for which shall be as herein indicated:

<b>License Type</b>	<b>Per Annum</b>
<b><i>Malt beverage licenses</i></b>	
Brewer's license	\$500
Distributor's license	\$400
Non-Quota (NQ) Retail Malt Beverage Package license	\$200
Non-Quota 4 (NQ-4) Retail Malt Beverage Drink license	\$200
Secondary NQ/NQ-4 Malt Beverage License	\$50
Microbrewery	\$500
<b><i>Distilled Spirits and wine licenses</i></b>	
Distiller's license (Class A or Class B)	\$500
Rectifier's license (Class A)	\$3,000
Rectifier's license (Class B)	\$960
Non-Quota 2 (NQ-2) Retail Drink license	\$1,000
Non-Quota 3 (NQ-3) Retail Drink license	\$300
Limited Restaurant	\$1,200
Quota Retail Package license	\$1,000
Quota Retail Drink license	\$1,000
Wholesaler's license	\$3,000
Bottling house license and bottling house distilled spirits license/wine storage license	\$1,000
Special Sunday Retail drink	\$300
Supplemental bar licenses (each, up to 5)	\$1,000
Caterer's license	\$800

<b>Temporary licenses</b>	
Special Temporary \$150 for first booth or point of sale location, \$50 for each additional booth or point of sale location whether the same shall dispense malt beverages, wine, and/or distilled spirits therefrom	\$150, \$50 per each additional
<del>[Distilled Spirits and Wine]</del> Special Temporary <u>Alcoholic Beverage Auction</u> license	<del>[\$200]</del> <u>100</u>
<b>Other licenses</b>	
Extended Hours license	\$3,000

(B) A non-refundable application fee of \$50 shall be charged to process each new application under this section. The application fee shall be applied to the licensing fee if the application is approved and shall be retained by the City's Finance and Administration Department if the application is denied by the City or voluntarily withdrawn by the applicant.

#### **§ 111.57 DUPLICATES.**

Whenever any license shall have been lost or destroyed, a duplicate may be issued by the City's Alcoholic Beverage Control Administrator, upon payment of a fee of ~~[\$1]~~ \$20.

#### **§ 111.58 EXTENDED HOURS LICENSE.**

(A) No person shall operate or maintain a business establishment within the City permitting the sale of any alcoholic beverages between the hours of 1:00 a.m. and 2:30 a.m. without first obtaining an Extended Hours license from the City Alcoholic Beverage Control Administrator who shall be responsible for the issuance of all such licenses.

(B)(1) All applications for an Extended Hours license shall be in writing and made directly to the City's Alcoholic Beverage Control Administrator. The City's Alcoholic Beverage Control Administrator shall request a confidential police report

and recommendation from the Chief of Police concerning the applicant's eligibility and the written certification of approval from the City's Development Services Director.

(2) In order to be eligible for an Extended Hours license, the applicant must have current and valid City and state alcoholic beverage license for the sale of distilled spirits, wine, or malt beverages by the drink, retail or package.

(3) All fees and taxes under § 111.55 hereof due to the City must be paid before an applicant shall be considered.

(4) No new licenses shall be issued without the written certification of the City's Development Services Director upon the application that the proposed site requesting issuance of the permit is not located within any residential zone of the City. All existing Extended Hours permits (now licenses) in residential zones are hereby grandfathered and may be transferred to a new holder at the same location.

(5) No applicant shall be granted an Extended Hours license who has been convicted of any felony until 5 years have passed from the date of conviction, release from custody or incarceration, parole or termination of probation, whichever is later, or of any misdemeanor described under KRS 218A.050 through 218A.130 in the 2 years immediately preceding the application; or of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages in the 2 years immediately preceding the [a] application.

(6) No applicant shall be granted an Extended Hours license unless the person is a resident of or is a corporation licensed to do business within the Commonwealth.

(7) The approval or denial of any Extended Hours license application shall be made

by the City's Alcoholic Beverage Control Administrator, in conformance herewith.

(C) (1) All licenses issued herein shall be subject to the following.

(2) No licensee shall sell any alcoholic beverages between the hours of 2:30 a.m. and 6:00 a.m. Monday through Saturday, or from 2:30 a.m. to 11:00 a.m. on Sunday.

(D) (1) No live entertainment shall be permitted after 11:00 p.m. on Sunday through Thursday, or after 1:00 a.m. on Friday and Saturday for those establishments located in a residential zone or in a commercial zone that also permits residential uses, unless the requisite permit is obtained from the City Manager pursuant to the provisions of Chapter 100 hereof.

(2) All Extended Hours license holders shall regulate noise levels to assure that noises emanating from the establishment do not disturb the surrounding residents.

(3) All Extended Hours license holders shall regulate the conduct of their patrons, to assure that upon their departure from the licensed premises they do not disturb the surrounding residents by engaging in conduct such as urinating in the street, fighting, drinking at the curb or directly outside the licensed premises, breaking bottles on the sidewalk or in the street, littering the immediate area with debris, using excessive profanity or trespassing upon private property in the immediate area.

(4) If the City's Alcoholic Beverage Control Administrator, upon review and a hearing, shall find repeated violations of divisions (D)(1) through (3), hereof, the Administrator may suspend or fail to renew any Extended Hours license so issued.

(E) (1) It shall be the responsibility of the City's Alcoholic Beverage Control

Administrator to investigate initial applications, transfers, and renewals of Extended Hours licenses, and to make determinations upon suspensions and/or revocations of the Extended Hours licenses. The City's Alcoholic Beverage Control Administrator shall also make determinations upon verified complaints from citizens or upon complaints received by the Police Department or other enforcement personnel regarding the violation of law by an Extended Hours license holder for the purpose of issuing suspensions and/or revocations of the same.

(2) The City's Alcoholic Beverage Control Administrator shall conduct an annual review before the renewal of any Extended Hours license and if it is found, upon review, that the Extended Hours license holder has had [~~three~~ two] or more criminal violations of any nature, resulting in convictions occur at the business establishment and/or within the licensed premises, within the annual period, then, upon a hearing, the City's Alcoholic Beverage Control Administrator shall revoke the Extended Hours license, and no renewal of the same shall be granted.

(3) The decision of the City's Alcoholic Beverage Control Administrator shall be reduced to writing. In the event that the City's Alcoholic Beverage Control Administrator shall deny any initial application for an Extended Hours license or, at the Administrator's discretion, delay the issuance thereof, or shall revoke or suspend any existing Extended Hours license, for cause, or shall fail to renew any existing Extended Hours license, the applicant or holder shall be permitted to appeal the decision of the City's Alcoholic Beverage Control Administrator to the City Manager, in writing, within 10 days of the decision. The City Manager shall

have the final determination and shall notify the applicant or holder of his or her decision, in writing, within 10 days thereof. If the City Manager shall approve the appeal, the Administrator shall instruct the City's Alcoholic Beverage Control Administrator to grant the initial application or issue or renew the existing license. In the event of further denial of the initial application or suspension or revocation of the license, the applicant or holder shall be notified of his or her right to further appeal to the Campbell Circuit Court within 30 days thereof.

(F) Whenever transfer of an Extended Hours license to a different transferee is proposed at the same location, the Extended Hours license may be transferred only if the transferee meets all eligibility requirements herein and if the transferee has the approval of the City's Alcoholic Beverage Control Administrator.

(G) The time changes brought into effect by the provisions of Daylight Savings Time shall have no effect upon the hours of operation of establishments operating within an extended hours license and such establishments shall be permitted to remain open and operating for the additional hour, lost or gained, as if the same did not exist. Therefore, at 2:00 a.m. on the day when Daylight Savings Time takes effect and the hour advances to 3:00 a.m., those establishments operating within an Extended Hours license shall be permitted to remain open for business until 3:30 a.m. Eastern Daylight Time. They shall, however, be required to close the business immediately thereafter. At 2:00 a.m. on the day when Daylight Savings Time changes back to Eastern Standard Time and the hour reverts to 1:00 a.m., those establishments operating with an extended hours license shall be permitted to remain open for business until 1:30 a.m. Eastern Standard Time. They shall,

however, be required to close the business immediately thereafter. On the day immediately following each, the hours of operation for establishments operating with an extended hours license shall be required to return to the normal operating hours of 1:00 a.m. to 2:30 a.m. Eastern Daylight Time or Eastern Standard Time, whichever is applicable. The purpose of this division is to enable Extended Hours license holders to continue normal business operating hours, in terms of the usual actual time they are open, without regard to the time changes brought about by the conversion to and from Eastern Daylight Time and Eastern Standard Time.

**SECTION II**

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded, published and effective upon publication.

PASSED: First reading July 24, 2017

PASSED: Second reading August 21, 2017

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Jerry R. Peluso, Mayor

ATTEST:

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Amy B. Able, City Clerk

PUBLISHED: By title and summary in the Campbell County Recorder the 31<sup>st</sup> day of August, 2017.