

City of Dry Ridge, Kentucky
Ordinance No. 739-2008

AN ORDINANCE OF THE CITY OF DRY RIDGE, GRANT COUNTY, KENTUCKY, RELATING TO THE LICENSING OF RESTAURANTS AND DINING FACILITIES FOR THE SALE OF ALCOHOLIC BEVERAGES BY THE DRINK WHEN SUCH FACILITIES SEAT A MINIMUM OF ONE HUNDRED (100) PERSONS AND DERIVE A MINIMUM OF SEVENTY PERCENT (70%) OF GROSS RECEIPTS FROM THE SALE OF FOOD.

WHEREAS: KRS 242.185 authorizes, by petition in accordance with KRS 242.020, a city in which prohibition is in effect, to hold a local option election on the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat a minimum of one hundred (100) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food;

WHEREAS: KRS 242.185 further authorizes the local government of a jurisdiction in which such alcoholic beverage sales are authorized to adopt regulations licensing such sales along with any other reasonable administrative regulations as may be necessary for the enforcement or administration of KRS 241.190; and

WHEREAS: The local option election was conducted pursuant to KRS 242.185 and approved. It is now the responsibility of the City to adopt regulations reasonably calculated to assure the sale of alcoholic beverages consistent with the legislative intent.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF DRY RIDGE, IN GRANT COUNTY, KENTUCKY, AS FOLLOWS:

SECTION I
Purpose.

This Ordinance is adopted to regulate the sale of alcohol pursuant to KRS 242.185 in such a manner as to effectuate the legislative intent of that statute. That intent is to permit the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat at least one hundred (100) persons and derive a minimum of seventy percent (70%) of their gross receipts from the sale of food. To realize this intent, the City shall implement this Ordinance in such manner as to assure that:

- A. Restaurants and dining facilities licensed under this Ordinance shall seat a minimum of one hundred (100) persons. Only permanent seating, excluding bar-type stools, patio seating or temporary chairs available as needed, satisfy this seating threshold.
- B. The sale of alcoholic beverages shall be accessory to the sale of food, offered only during times in which the licensee's kitchen and food service staff is on duty.
- C. Restaurants and dining facilities licensed under this Ordinance shall derive a minimum of seventy percent (70%) of their gross receipts from the sale of food as certified by periodic documentation.

SECTION II Application Review

No alcoholic beverage shall be sold in the City, except as authorized under KRS 242.185 and this Ordinance. Authorization under this Ordinance shall be obtained only upon the City's receipt and approval of an application in accordance with this Ordinance, the City's issuance of a license, the ABC's receipt and approval of an application in accordance with applicable law and the ABC's issuance of a license.

Application submittal and review shall be conducted as follow:

A. Application and Fee.

1. Persons requesting approval and license authorizing the sale of alcoholic beverages by the drink pursuant to KRS 242.185 and this Ordinance shall submit a completed application to be obtained from the Office of the Mayor. The Office of the Mayor shall determine the form of this application And the information required by it. That form and information shall be reasonably calculated to permit a reviewing officer to determine compliance with this Ordinance. In any event, the City shall accept an application in the form approved and accepted by the Alcoholic Beverage Control (ABC). Any applicant utilizing the ABC form shall provide any additional information not otherwise required by the ABC form by supplemental attachment to the application.
2. Applicants for a license under this Ordinance shall pay a license fee of Eight Hundred Dollars (\$800.00) pursuant to the provisions of KRS 243.070.

B. Supplemental Information. An applicant currently operating a restaurant or dining

facility of comparable size to that which is the subject of the application and one that offers the sale of alcoholic beverages by the drink shall supplement the required application. The required supplemental data shall include information related to its current operation, which reasonably demonstrates the likelihood that applicant's business in Dry Ridge will yield income earned through the sale of food equal to or greater than seventy percent (70%) of its gross receipts. This supplemental data shall include, but not necessarily be limited to, the following specific information:

1. The population of the community in which it currently operates;
2. Alcohol sales permitted in the community in which it currently operates; and
3. The hours of operation, including any differentiation between the hours during which food and drinks are sold.

C. Periodic Information. Applicant to whom a license is issued authorizing the sale of Alcoholic beverages by the drink pursuant to this Ordinance shall provide periodic information demonstrating compliance with the continuing requirement that seventy percent (70%) of the applicant's business income is earned from the sale of food.

This documentation shall be provided on a schedule to be coordinated with the applicant's quarterly tax filings. Regardless of the applicant's filing schedule, the forms of the applicant's periodic information shall be submitted not later than six months after applicant commenced sale of alcoholic beverages pursuant to this Ordinance.

This information shall consist of a certificate from a Certified Public Accountant familiar with the applicant's pertinent business records. This certificate shall state:

"I have conducted a limited scope audit according to accepted accounting principles of the pertinent records of _____. Licensee under Ordinance 739-2008, and certify that the Licensee earned at least seventy percent (70%) of its gross receipts from the sale of food during the quarter ending _____.

This certificate shall include a brief description of the methodology utilized in the determination of the certified percentage.

D. Administrative Officer. The City Officer responsible for administering this Ordinance shall be the Mayor or such employee as the Mayor shall designate. All

transactions required of compliance or enforcement of this Ordinance shall be directed to or issued by the Mayor. He or she shall review the applications along with supplemental and periodic information and issue licenses authorizing the sale of alcoholic beverages by the drink pursuant to this Ordinance. The Mayor and employees with duties arising under this Ordinance shall comply with KRS 241.180 and 190.

E. Forms. All forms reasonably necessary for the implementation of the Ordinance shall be provided by the Mayor's office.

F. Auditing Authority. The Mayor is empowered to demand access to the pertinent Business records of any applicant or licensee for the purpose of conducting an independent audit of those records to substantiate compliance with this Ordinance. The Mayor or such City employee as the Mayor shall designate may obtain such outside professional services as are reasonably necessary to conduct the audit. In the event the independent audit reveals non-compliance by the applicant or licensee, the cost of the audit shall be assessed to the licensee.

SECTION III Issuance and Renewal of Licenses.

A. Issuance: Upon satisfactory compliance with all City imposed requirements, the Mayor shall sign an acknowledgement of that compliance. The ABC shall rely upon that acknowledgement and upon review of the application to the ABC, shall issue an appropriate License. Upon presentation of the ABC issued license, the Mayor shall issue the City's license.

B. Renewal: A license issued pursuant to this ordinance shall authorize the sale of alcoholic beverages for one year. The license may be renewed annually thereafter upon a showing of compliance with applicable regulations and the payment of a renewal fee of Eight Hundred Dollars (\$800.00).

SECTION IV. Operational Regulations.

A. Hours: No license operating pursuant to this Ordinance shall be open for business earlier than 6:00 a.m. or later than 12:00 midnight, Monday through Thursday. Friday and Saturday license operating hours pursuant to this Ordinance shall be 6:00 a.m. and no later than 1:00 a.m.

B. Sales Permitted Only When Food Available: The provisions of Section Four (A) above, notwithstanding, no licensee operating to this Ordinance shall sell alcoholic beverages at any time at which the licensee's kitchen and food service staffs are off duty. This

requirement is necessary for accomplishment of the legislative intent stated in Section I, above, and in KRS 242.185. No carryout alcohol sales shall be permitted and no alcohol shall be taken off the premises.

C. No Sunday Sales Permitted: The license issued under KRS 242.185 and this Ordinance authorizes the sale of alcoholic beverages only Monday through Saturday. Sunday sales of alcoholic beverages can be authorized only upon the City's adoption of an ordinance expressly providing for such sales.

SECTION V. Violations

A. Fines: Violations of this Ordinance shall be punishable by fine of up to Five Hundred Dollars (\$500.00) for each offense. Complaints alleging violations of this Ordinance may be filed in the Grant District Court and prosecuted as all other municipal ordinance violations. Each day of each violation shall constitute a separate offense.

B. Administrative Action: Violations of this Ordinance shall constitute grounds for administrative action by the Mayor. Appropriate actions by the Mayor upon the determination of a violation shall include a warning and probationary period in which the violations is corrected, a license suspension or license revocation. Suspension may be satisfied by the payment of a fine of Fifty Dollars (\$50.00) per day. The action of the Mayor shall be commensurate with the seriousness of the violation. Upon a finding of a subsequent material violation, the license may be suspended for such time as is commensurate with the seriousness of the offenses or, if previously suspended, revoked. Subsequent suspensions may be satisfied by the payment of a fine of Fifty Dollars (\$50.00) per day for no more than one-half (1/2) of the suspension.

C. Show Cause Hearing: Hearings on alleged violations shall be in the manner of a "show cause" hearing at which the licensee shall bear the burden of persuasion that the alleged violation did not occur. The licensee shall be afforded the right to:

1. Reasonable notice of the charge;
2. Representation;
3. Presentation of such evidence and witnesses as in its discretion are appropriate to the issue; and
4. A finding reasonably supported by the evidence.

D. Hearing Officer: Pursuant to Section Two (D) above, the Mayor may designate a City employee or other person as the hearing officer to conduct the hearing provided for in the Section. In the event of such a designation, the Hearing Officer's determination shall be in the form of a recommendation upon which the Mayor shall determine appropriate action.

E. Appeal: Pursuant to KRS 241.200 all orders of the Mayor may be appealed to the Alcoholic Beverage Control Board.


F. Referral to ABC: In lieu of the hearing authority provided above, allegations of violations of this Ordinance may be referred to the Alcoholic Beverage Control Board for determination.

SECTION VI

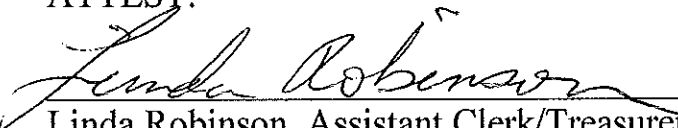
This ordinance, upon its adoption and approval according to law, shall be effective as soon as practical.

SECTION VII

All Ordinances or parts of any Ordinances in conflict herewith, to the extent of such conflict, if any, are hereby repealed.


Clay Crupper, Mayor
City of Dry Ridge, Kentucky

ATTEST:


Linda Robinson, Assistant Clerk/Treasurer
City of Dry Ridge, Kentucky

FIRST READING: December 15, 2008

SECOND READING: December 22, 2008

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