

CITY OF COAL RUN VILLAGE

ORDINANCE NO. 2009-14

ORDINANCE REGULATING THE SALE OF ALCOHOLIC BEVERAGES AND OTHERWISE PROVIDING PROVISIONS FOR ALCOHOLIC BEVERAGE CONTROL WITHIN THE CITY LIMITS OF COAL RUN VILLAGE, KENTUCKY

WHEREAS, a local option election for limited sales of alcoholic beverages purchased in conjunction with a meal was held on November 3, 2009, pursuant to KRS 242.1244 to address the issue as to whether the City of Coal Run Village should permit the limited sale of alcoholic beverages within the City of Coal Run Village in accordance with KRS 242.1244 and all other applicable law; and

WHEREAS, a majority of the citizens of the City of Coal Run Village voted in favor of the limited sale of alcoholic beverages in the City of City of Coal Run Village; specifically, the majority of the votes in said local option election having been “Yes” to the proposition on the ballot stated, pursuant to KRS 242.1244, as “Are you in favor of the sale of alcoholic beverages by the drink in the City of Coal Run Village at restaurants and dining facilities with a seating capacity of at least fifty (50) persons and which derive at least seventy per cent (70%) of their gross receipts from the sale of food if the alcoholic beverage is purchased in conjunction with a meal?”; and

WHEREAS, pursuant to KRS 242.1244, KRS 242.185(4) and (5) and all other applicable state law, the City of Coal Run Village may impose certain restrictions and regulations and provide for the establishment and collection of certain fees and fines related to the limited sale of alcoholic beverages.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COMMISSION OF THE CITY OF COAL RUN VILLAGE, KENTUCKY, AS FOLLOWS:

SECTION 1: INCORPORATION OF STATE LAW; DEFINITIONS; AND COMPLIANCE REQUIRED

- a. Definitions: As used in this Ordinance, unless the context clearly indicates a different meaning and specifies the language of a particular definition which shall apply, the words and terms as defined in Kentucky Revised Statute 241.010 (KRS 241.010) shall apply.**

- b. **Incorporation of State Law:** 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 Coal Run Village, except as otherwise lawfully provided herein. As used herein “State” means the Commonwealth of Kentucky, and “City” means the City of Coal Run Village, Kentucky.

SECTION 2: LICENSE

In accordance with the authority conferred by KRS 242.1244, KRS 242.185(4) and (5), KRS 243.070, and all other applicable state law, the City of Coal Run Village shall have the power and authority to issue licenses for the limited sale of alcoholic beverages by the drink purchased in conjunction with a meal at restaurants and dining facilities that seat a minimum of fifty (50) persons and derive a minimum of seventy per cent (70%) of their gross receipts from the sale of food; and said licenses shall only be issued hereunder to premises in compliance with all provisions of KRS 242.1244. Pursuant to all applicable state law, the limited restaurant license issued hereunder shall authorize the limited retail sale of alcoholic beverages, including distilled spirits, wine and malt beverages, as permitted by KRS 242.1244, all other applicable state law, and the license granted hereunder.

SECTION 3: FEDERAL, STATE AND LOCAL LICENSES

Each licensee hereunder shall obtain all required federal, state and local licenses, all of which shall be posted in a conspicuous place upon the premises where the licensed business is conducted.

SECTION 4: APPLICATION PROCESS, ISSUANCE OF LICENSES, SUSPENSION AND/OR REVOCATION OF LICENSE

a. Application Process:

1. **Application for State License:** All applicants for the alcoholic beverage license available pursuant to this Ordinance must submit the appropriate application for issuance of a State license as provided by KRS 243.380 and all other applicable state law.
2. **Local Administrator to Approve the State and City Application:** Pursuant to KRS 243.370 and all other applicable state law, an applicant for an alcoholic beverage license must first have the required State license application

approved by the City Alcoholic Beverage Control Administrator before the applicant is eligible to apply for a State license.

3. **Process:** An applicant for a license under this Ordinance shall file with the City Alcoholic Beverage Control Administrator a copy of the State license application as required by the State, along with the required City license application. The City license application shall be in a form prescribed by the City ABC Administrator and the application form shall be made available to interested applicants through the office of the City Clerk. The City license application shall be properly subscribed and sworn to before a notary public or other officer authorized to administer an oath and shall include an identification of the premises where alcoholic beverages are to be sold, either by way of the street number or otherwise, along with the name of the owner of the premises, and shall be accompanied by a certified copy of the deed or lease agreement through which the applicant holds possessory interest in the premises, in addition to any other information required on the application form as may be prescribed by the City ABC Administrator. In the event that the applicant is a corporation or a limited liability company, the applicant shall provide personal information as may be required on the application form (by way of example, name, age, date of birth, Social Security number, address, etc.) of each shareholder, officer and/or director of the corporation and/or member of the limited liability company, whichever applies.

Upon approval of the City and State applications by the City ABC Administrator, the State application shall be submitted to the appropriate state agency for consideration.

b. **Causes for Refusal to Issue or Renew License, or Suspension or Revocation of License:**

1. **State Law References:** Causes for refusal to issue or renew a City license or for suspension or revocation of a City license shall be the same as provided for State licenses pursuant to KRS 243.450, 243.490, and 243.500.
2. **Violation of City Ordinances:** In addition to the above State law references, violation of any City ordinance concerning alcoholic beverage licensing, sales or the administration thereof shall also be grounds for refusal to issue or renew a license or suspension or revocation of a license.
3. **Delinquent Taxes or Fees:** No license for the sale or trafficking of alcoholic beverages shall be granted or renewed to any person or entity that is delinquent in the payment of any taxes or fees due the City at the time of application for the license; nor shall any license be granted or renewed to sell alcoholic beverages upon any premises or property, owned and/or occupied

by the licensee, for which there are any delinquent taxes or fees due the City. If a licensee becomes delinquent in the payment of any taxes due to the City at anytime during a license period, the license to sell alcoholic beverages shall be subject to revocation or suspension. The City ABC Administrator may, in his or her discretion, approve a license to sell alcoholic beverages after receiving from the City Clerk a written statement to the effect that the applicant for a license has paid or has made satisfactory arrangements with the City Clerk to pay any indebtedness represented by the unpaid and delinquent taxes or fees.

4. **Appeals:** Appeals may be taken from any decision by the City ABC Administrator to the State Alcoholic Beverage control Board, pursuant to the provisions of KRS 241.200 and 243.550, and all other applicable state law.

c. **Approval or Denial of Application or Renewal:**

1. **Approval:** If upon review of the license application, the City ABC Administrator determines that the applicant has complied with all requirements and regulatory provisions of this ordinance and applicable state law, that the premises sought to be licensed meets all requirements of this ordinance and applicable State law and that there are no causes for denial of a license, the City ABC Administrator shall approve the application.
2. **Denial:** If the City ABC Administrator has reasonable grounds to believe that an applicant has violated any law, rule or regulation relating to alcoholic beverages, the Administrator may issue to the applicant a written order setting forth such violations and requiring the applicant to show cause why the requested license should be issued. The City ABC Administrator shall have the right to order, and the applicant shall have the right to request, an evidentiary hearing to examine any violation set forth in the show cause order issued by the City ABC Administrator. Any such evidentiary hearing requested or ordered shall be presided over by the City ABC Administrator who, upon conclusion of the evidentiary hearing, shall issue a final order addressing each alleged violation. Any decision by the ABC City Administrator on the application shall be subject to appeal as provided under this chapter and applicable state law.
3. **Issuance of City License:** Upon issuance of a State license, the requested City license shall be issued, subject to the provisions of this Ordinance and state law concerning renewal, revocation and/or suspension.
4. **Posting of Licenses:** Each City license issued under this Ordinance shall be posted at the licensed premises in the same manner as prescribed by KRS

343.620 for State licenses. An exact duplicate or facsimile of each City license issued under this chapter shall remain in the City Clerk's Office as part of the public record.

SECTION 5: ANNUAL LICENSE FEE

- a. **Amount:** Each licensee shall pay an annual license fee for the privilege of trafficking in alcoholic beverages through the limited sale of alcoholic beverages permitted by the limited restaurant license provided for hereunder as allowed by applicable state law. The fee schedule set forth in KRS 243.070, including any subsequent amendments, is hereby adopted under this Ordinance. The current annual license fee for a limited restaurant license for the City of Coal Run Village is Eight Hundred Dollars (\$800.00).
- b. **Time of Payment:** The annual license fee imposed in this section shall be paid at the time of license application, both in the case of initial application and any subsequent renewal application.

SECTION 6: ANNUAL REGULATORY LICENSE FEE

- a. **Imposition of Regulatory License Fee:** A regulatory license fee is hereby imposed, pursuant to KRS 242.1244 and KRS 242.185(4) and (5) and all other applicable state law, with said regulatory license fee being imposed upon the gross receipts from the sale of alcoholic beverages permitted pursuant to licenses issued under this Ordinance. This regulatory license fee, as initially established by this Ordinance, shall be for the effective date of July 1, 2009 through June 30, 2010. Thereafter, the City Commission shall annually adopt at the time in which each fiscal year budget is adopted, such percentage rate for the regulatory license fee hereby imposed as shall be reasonably estimated to ensure full reimbursement to the City for the cost of any additional policing, regulatory or administrative expenses related to the sale of alcoholic beverages. Such regulatory license fee shall be in addition to any other tax, fee or license permitted by law, but a credit against such regulatory license fee shall be allowed in an amount equal to the annual license fee imposed under this chapter and required to be paid at the time of license application or renewal, and such regulatory license fee shall be applied annually.
- b. **Regulatory License Fee Percentage Rate:**
 - 1. The regulatory license fee imposed under this Ordinance shall be two per cent (2%) of the gross sales receipts for all alcoholic beverages sold for the licensing year beginning July 1, 2009.

2. The regulatory license fee established above in Subsection 1 shall continue until amended or repealed by the City Commission through amended ordinance.

c. **Payment of Regulatory License Fee:**

1. The regulatory license fee as established hereunder shall be paid on a quarterly basis and shall be accompanied by fully completed and signed tax return forms approved for use by the City ABC Administrator and the City Clerk. Each quarterly payment tax return form shall be submitted to the local ABC Administrator by the 20th day following the end of each quarter and shall indicate the preceding quarter's gross sales receipts and all other information required in the applicable form.

SECTION 7: LIMITED DAYS AND HOURS

The licensee may only conduct the activities licensed hereunder during the following days and hours: Monday through Saturday, between 11:00 A.M. and 12:00 A.M. (Midnight).

SECTION 8: TRAINING, SERVING AND ORDERING

All licensees and any employees thereof involved in the selling and serving of alcoholic beverages shall be at least twenty (20) years of age and shall complete a City approved training program. There is currently a program offered by the Commonwealth of Kentucky, Alcoholic Beverage Control Office, entitled Server Training in Alcohol Regulations ("S.T.A.R.") which the City hereby specifically approves.

SECTION 9: RECORDS AND SEARCHES OF LICENSED PREMISES

All licensees hereunder shall maintain adequate and detailed records of all sales involving food and alcoholic beverages. These records shall be available for inspection by the Local ABC Administrator or any investigator under the authority of the City ABC Administrator. Any authorized State and/or local investigator may inspect any licensed premises.

SECTION 10: SIGNS AND ADVERTISING

All signs utilized by a licensee shall comply with local codes and ordinances. Signage which directly or indirectly refers to alcoholic beverages shall be limited to one (1) sign not over two (2) square feet that must be displayed from inside the licensed premises. No additional signs, banners, posters or other type of display advertising which refers to alcoholic beverages shall be displayed on, nor visible from the exterior of any licensed premises. This restriction shall not prevent a licensee from placing in the windows of the licensed premises menus or other price cards not larger than 11"x14" in size, setting forth the price

at which the licensee offers items for sale, including alcoholic beverages. No flashing lights shall be used to illuminate the exterior of any licensed premises. A licensee is not permitted to distribute or cause to be distributed any handbills, circulars or cards as a medium for advertising alcoholic beverages.

SECTION 11: CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

a. **City Alcoholic Beverage Control Administrator:** The duties of the office of City Alcoholic Beverage Control Administrator (“City ABC Administrator”) as hereinafter established in this Ordinance shall be assigned to the office of the Mayor. The Mayor shall have the power and authority to designate and appoint individuals as Deputy Alcoholic Beverage Control Administrators (“Deputy ABC Administrators”), to assist in the responsibilities of the office of the City ABC Administrator. The City ABC Administrator shall have the power and authority to promulgate such regulations as may be necessary to implement this chapter, pursuant to KRS 241.190 and KRS 241.060.

b. **Functions, Duties and Powers:**

1. **Functions:** The functions of the City ABC Administrator shall be the same with respect to the City’s alcoholic beverages licenses and regulations as the functions of the Kentucky Alcoholic Beverage Control Board (the “State Board”) with respect to State alcoholic beverage licenses and regulations, as provided in KRS 241.190, except that no regulations of the City ABC Administrator shall be less stringent than the statutes relating to alcoholic beverage control or the regulations of the State Board.
2. **Duties and Powers:** The City ABC Administrator shall have the same powers and duties with respect to suspension and revocation for cause of alcohol licenses issued by the City as the State Board has with respect to alcohol licenses issued by the State under KRS 241.060.
3. **Right of Inspection:** The City ABC Administrator, his designees/appointees and/or City of Coal Run Village law enforcement officers shall have available at all reasonable times for their inspection, all books and records required to be maintained by licensees pursuant to KRS 244.150 and all other applicable state laws and regulations. Further, the City ABC Administrator shall simultaneously receive copies of all reports submitted by licensees to the State Alcoholic Beverage Control Board.

c. **Appeals from City ABC Administrator:** Appeals from any order of the City ABC Administrator may be taken to the State Alcoholic Beverage Control Board by filing with the Board within thirty (30) days a certified copy of the order of the City ABC Administrator from which the appeal is taken. Matters at issue shall be heard by

the Board as upon an original proceeding, and the appeal shall be governed in accordance with KRS 241.200, KRS 243.550, and all other applicable state law.

d. Oath and Bond of Local ABC Administrator and Deputy ABC Administrators:

1. Each City ABC Administrator, before entering upon his duties as such, shall take the oath prescribed in Section 228 of the Constitution of the Commonwealth of Kentucky, and shall execute a bond with a good corporate surety in the penal sum of not less than One Thousand Dollars (\$1,000.00).
2. Each City ABC Administrator may require any Deputy ABC Administrator and/or any City employee under his or her supervision to execute a similar bond in such penal sum as the City ABC Administrator deems necessary.
3. The cost of bonds given under this section shall be borne by the City, in accordance with KRS 241.180.

SECTION 12: MINORS

A licensee shall not permit any person less than twenty-one (21) years of age to purchase or possess alcoholic beverages under any circumstance.

SECTION 13: LICENSEE TO DISPLAY WARNING TO MINORS

It shall be the duty of every retail licensee to display at all times in a prominent place a printed card not smaller than 12"x16" which shall read substantially as follows:

WARNING TO MINORS: ANY PERSON UNDER THE AGE OF TWENTY-ONE (21) ARE SUBJECT TO A FINE OF UP TO ONE HUNDRED DOLLARS (\$100.00) IF THEY:

1. Enter licensed premises to buy, or have served to them, alcoholic beverages;
2. Purchase or attempt to buy, or have served to them, alcoholic beverages;
3. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.

SECTION 14: PENALTY FOR VIOLATIONS

- a. The penalties and licensee duties and prohibitions set forth in Kentucky Revised Statutes Chapters 242, 243 and 244 are hereby adopted and incorporated by reference as if set out at length herein.

b. Any person who violates any provisions 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:

1. For the first offense, a fine not to exceed Two Hundred Dollars (\$200.00);and

2. For any subsequent offense, a fine not to exceed Five Hundred Dollars (\$500.00) or confinement in jail for not more than six (6) months, or both.

c. In addition to any other penalty provided for herein or as provided under any other applicable federal, state or local law or regulation, any licensee violating any provision of this Ordinance shall be subject to suspension or revocation of any and all licenses issued under this chapter.

The provisions of this Ordinance shall become effective upon passage, approval, and publication as required by law.

The above Ordinance was given a first reading on the 10th day of December, 2009. The second reading was given on the 5th day of January, 2010.

Commissioner Compton moved the above Ordinance No. 2009-14 be adopted. Commissioner Ramsey seconded the motion.

Upon roll call the votes were as follows:

C. LaVerne Dye, Mayor	<u>yes</u>
Jerry Bliffen, Commissioner	<u>abstain</u>
Marilyn Compton, Commissioner	<u>yes</u>
Steve McQuerry, Commissioner	<u>yes</u>
Joe Ramsey, 11, Commissioner	<u>yes</u>

APPROVED:

/s/C. LaVerne Dye
C. LaVERNE DYE, MAYOR

ATTEST:

/s/ Debra J. Tackett
DEBRA J. TACKETT, CITY CLERK