

ORDINANCE NO. - 2024

AN ORDINANCE OF THE CITY OF BERE, KENTUCKY, REVISING THE ALCOHOL CONTROL CODE BY ADDING SECTION 56.005 (B)(o) TO PROHIBIT NUDITY AND ADULT ENTERTAINMENT ACTIVITIES ON LICENSED PREMISES, AND TO PROHIBIT SALES OF ALCOHOLIC BEVERAGES ON CITY-CONTROLLED PROPERTY.

WHEREAS, in Ordinance 05-2023 the City of Berea amended Chapter 56 of the Berea City Code by repealing Sections 56.001-56.006 relating to alcohol sales and enacted a new Chapter 56, Sections 56.001-56.099, providing for the regulation of the sales of alcoholic liquors and beverages within the City limits; and

WHEREAS, in Ordinance 04-2024, the City of Berea further amended Chapter 56 of the Berea City Code making revisions to Sections 56.004 and 56.005 of the Berea City Code, and

WHEREAS, the City Council finds that nudity and sexual conduct and depiction thereof, and certain adult entertainment activities, coupled with alcohol in licensed premises, encourages undesirable behavior and is not in the interest of the public health, safety, and welfare; and

WHEREAS, the City Council has chosen to avoid the disturbances associated with mixing alcohol and nudity and sexual conduct, and certain adult entertainment activities, by means of a reasonable restriction upon licensed establishments which sell alcoholic beverages; and

WHEREAS, the City Council further finds that it is in the best interests of public health, safety, and welfare to prohibit sales of alcoholic beverages on city-controlled property;

NOW, THEREFORE, the City Council of the City of Berea, Kentucky, does ordain as follows:

SECTION I

That Section 56.005 of the Code of Ordinances is hereby amended so that such Section shall read as follows:

§ 56.005 OPERATION OF LICENSED ESTABLISHMENTS.

(A) Prohibited retail sales.

(1) No retail licensee shall sell, give away or deliver any alcoholic beverages or procure or permit any alcoholic beverages to be sold, given away or deliver to:

(a) Any person under the age of 21; or

(b) Any person actually or apparently under the influence of alcoholic beverages;

(c) A habitual drunkard or any person convicted of drunkenness as many as three times within the most recent 12 month period; ~~or~~

(d) Any person known to the seller to have been convicted of any misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or of any felony; or

(e). Any person on city-controlled property

(2) Under subdivision (A)(1)(a), it is an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his or her age could not have been ascertained by any other means and that the purchasers appearance and character indicated strongly that he or she was of legal age to purchase alcoholic beverages, such evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.

(B) Persons under the age of 21 not to possess or purchase liquor nor to misrepresent age or use fraudulent identification nor to loiter in barrooms; exceptions.

(1) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LOAF. To spend time in idleness; as to loaf time away.

LOITER. To be slow in moving, delay, linger, saunter, tarry, lag behind; to wander as an idle vagrant; and to waste time.

PREMISES. The place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments the entire lot upon which the business is situated.

RESTAURANT. An establishment, the principal business of which is the furnishing of meals to the public. The incidental sale of sandwiches and other food items shall not render any licensed premises a "restaurant" within the meaning of this regulation.

(2) Prohibitions.

(a) No person under 21 years of age shall enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.

(b) No person under 21 years of age shall possess for his or her own use, or purchase or attempt to purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.

(c) No person under 21 years of age shall misrepresent his or her age for the purpose of inducing any licensee or other employee of any licensee to sell or serve any alcoholic beverage to such person.

(d) No person under 21 years of age shall use or attempt to use false, fraudulent or altered identification cards or paper or any document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

(e) No person under the age of 21 years shall possess in the city any alcoholic beverage outside of the confines of his or her abode or any residence. Any alcoholic beverages found in possession of such person shall be seized as contraband.

(f) No person under the age of 21 years shall loaf or loiter in or about the barroom of any licensed premises where alcoholic beverages are sold by the drink.

(g) Any person under the age of 21 years remaining in any barroom of any premises licensed to sell alcoholic beverages for the purpose of listening to a radio or for the purpose of listening to and observing a television set, will be considered as loafing and loitering within the meaning of this regulation. The listening to any radio program or the observance and listening to any television program by minors in any premises

licensed to sell alcoholic beverages by the drink shall not permit the establishment to be considered as a place where a public exhibition, sport or athletic event is being conducted. Any minor, or minors, entering or remaining in any licensed

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premises having a bar at which alcoholic beverages are sold by the drink for the purpose of playing pool, and the like, will be considered as loitering or loafing within the meaning of this regulation.

(3) *Exceptions.*

(a) *Limited.* Exceptions are limited to those created by KRS 244.085, KRS 244.087, and KRS 244.090, if applicable.

(b) *Persons under 21.* Persons under the age of 21 years may patronize licensed establishments such as restaurants, grocery stores, drug stores, hotels, private clubs, parks, fairs or public exhibitions where sports or athletic events are scheduled. Bowling is considered an athletic event. During junior league bowling, the sale of alcoholic beverages on licensed premises is prohibited.

(c) *Retail premises to furnish clear view from sidewalk or entrance; hotel or club may serve in separate room.* The entrance doors of any premises for which a retail license has been issued shall be of clear glass. The premises shall be so erected and maintained as to furnish a clear view of the entire premises from the sidewalk, or, if the premises are not on the street level, from the entrance. No partition, box, stall, screen, curtain or other device shall obstruct the view or the general observation of persons, but partitions, subdivisions or panels that are not higher than 48 inches from the floor shall not be construed as obstructing the view or the general observation of persons. Any license to any bona fide hotel or club shall entitle the licensee to serve such alcoholic beverages as it is licensed to sell in a separate room at banquets or where meals are served.

(d) *Retail premises not to be disorderly.*

1. No person licensed to sell alcoholic beverages at retail shall cause, suffer, or permit the licensed premises to be disorderly.

2. Acts which constitute disorderly premises consist of causing, suffering, or permitting patrons, the licensee, or the licensee's servants, agents, or employees to cause public inconvenience, annoyance or alarm, or wantonly creating a risk through:

a. Engaging in fighting or in violent, tumultuous or threatening behavior; or b.

Making unreasonable noise; or

c. Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or

d. Creating a hazardous' or physically offensive condition by any act that serves

no legitimate purpose; or

e. Creating a public nuisance; or

f. Engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor; or

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g. Failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or a local government, or by state administrative regulations, for the licensed premises.

(e) *Security and lighting.* The licensee shall be responsible for maintaining security on his premises including providing adequate lighting to illuminate the sidewalk and all adjacent parking areas and to promote the safety, health and welfare of the general public utilizing the licensed premise. Security standards are further necessary to discourage unlawful activity, in and around the licensed premises.

(f) *Business hours.*

1. *Distilled spirits and wine by the drink, Retail package distilled spirits and wine.*

Unless otherwise provided herein, the selling, giving away, or delivering of distilled spirits, wine by the drink, or malt beverages shall not be permitted during the following hours:

A. Between the hours of 1:00 a.m. and 11:00 a.m. on a Sunday;

B. Between the hours of 1:00 a.m. and 6:00 a.m. on Monday through Saturday.

2. A premises must obtain the appropriate type(s) of license(s) prior to being able to lawfully sell, give away, or deliver alcohol of any kind pursuant to the relevant licensing provisions of this chapter.

3. If a licensee provides a separate locked department within its licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits and wine, and such department is kept locked during the applicable times mentioned above, it shall be deemed to have complied with this section.

4. A. The term **LOCKED DEPARTMENT** shall include all display windows, show cases, shelves, and counters. In no event shall the shelves and counters be left open, but shall have a door affixed thereto, and the storeroom, display windows, show cases, shelves and counters shall be under lock and key. The door may be sliding or affixed with hinges and may be glass, wood, or wire netting of not more than one inch mesh.

B. A separate locked department will be deemed to exist if the licensee uses a

register or computerized check-out system that prohibits the sale of alcoholic beverages and the licensee physically conceals or covers all stocks of alcoholic beverages during the times the licensee is not permitted to remain open.

6. A licensee shall not sell, give away, or deliver any alcoholic beverage or permit any alcoholic beverage to be sold, given away, or delivered on the licensed premises during the hours specified above. A licensee shall not permit the consumption of alcoholic beverages on the licensed premises for a period of more than 30 minutes

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after the hour it is to close for business or to stop selling and delivering alcoholic beverages.

(g) *Control of beverages on the licensed premises.*

1. *Premises of retail package licensees.* No bottle of distilled spirits or wine shall be opened or consumed on the licensed premises by any person; provided, however, that a licensee holding a Sampling License pursuant may provide samples of distilled spirits or wine in compliance with KRS 243.0307.

2. *Premises of malt beverage licensees and retail drink licensees.* No distilled spirits, vine or malt beverages shall be taken from the licensed premises in an open container; provided, however, that a licensee holding a Sampling License pursuant may provide samples of distilled spirits, wine, or malt beverages in compliance with KRS 243.0307.

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(h) *Duty to display warning.* It shall be the duty of every retail licensee to display at all times in a prominent place a printed card at least eight inches by eleven inches in size which shall show, in 30 point or large type substantially as follows:

“WARNING TO MINORS

Persons under the age of 21 are subject to a fine up to \$100 if they: 1. Enter licensed premises to buy, or have served to them, alcoholic beverages.

2. Possess, purchase, or attempt to purchase, or to get another to purchase, alcoholic beverages.

3. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.”

(i) *Prizes and premiums.* It shall be unlawful for any licensee under this subchapter who sells alcoholic beverages of any kind, 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.

(j) *Gambling; games of chance.* No gambling or games of chance shall be permitted

in any form upon such licensed premises. Dice, slot machines, or any device of chance are prohibited and shall not be kept on such premises.

(k) *Controlled substances.* It shall be unlawful for any licensee under this subchapter to sell, to smoke or keep or permit to be sold, smoked or kept upon the licensed premises any marijuana. It shall be unlawful for any licensee, except licensed drug stores, to keep or sell or permit to be sold or used on the licensed premises any narcotic or barbiturate drugs. In addition to other penalties set out in this subchapter for the violation of this section, the City Alcoholic Beverage Control Administrator shall also have the authority to revoke the license issued to said premises.

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(l) *Radio receiving apparatus.* It shall be unlawful for any licensee licensed under this subchapter to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from the police radio station as it is now or may hereafter be operated. In addition to other penalties set out in this subchapter for the violation of this section, the radio receiving apparatus shall be confiscated.

(m) *Warning systems.* It shall be unlawful for any license under this subchapter to have or maintain any sound, light or other warning system on such premises which is intentionally adjusted or constructed or which is utilized in such a fashion as to indicate to employees or patrons of the establishment that law enforcement officials are on the premises. This section includes announcements made over the public address systems.

(n) *Permitting possession and consumption of alcoholic beverages on premises.*

1. No person being the owner or occupant or otherwise in possession of any property located within the city knowingly shall allow any person under the age of 21 years to remain on such property while in the possession of intoxicating liquor or beer or while consuming intoxicating liquor or beer.

2. It shall be an affirmative defense under this section if the person charged with the offense, enlisted the aid of and cooperated with law enforcement personnel to cause minors who are utilizing intoxicating liquor or beer in violation of this section to not remain on his property.

(o) *Nudity and Adult Entertainment Activities Prohibited*

No licensee shall offer or permit nudity, adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premises. No licensee shall permit explicit sexual activity, whether actual or simulated, upon any licensed premises. No licensee shall sponsor or permit wet t-shirt or wet clothing contests, lingerie fashion shows, mud wrestling, Jell-O wrestling, or similar activities, nor shall a licensee allow dancing with touching for compensation (including but not limited to wages, tips, or gratuities), or any other service, display, or contest requiring physical contact between patrons and/or patrons and employees on any licensed premises. No licensee shall

sponsor, offer, or permit drinking contests, all-you-can-drink specials, or free drinks on any licensed premise in the City.

(C) The entrance of any premises for which a retail license has been issued shall be of clear glass and permit an unobstructed view. If the premises are located at street level, the view of the entrance from the sidewalk must be unobstructed, or if the premises are not located at street level, the view from the entrance must be unobstructed. No partition, box, stall, screen, fence, curtain or any other device shall obstruct the view of the entrance or the general observation of persons, nor prohibit ready access to and from the entrance. Any outside areas where alcoholic beverages are served to or consumed by customers or patrons of the licensed premises and

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outside seating areas of the licensed premises shall be in an area fully under the exclusive control and possession of the licensee and shall be enclosed by such a permanent structure as may be permitted under the ordinances of the city. No such outside areas shall be readily accessible except by means under the exclusive control of the licensee.

SECTION II

All ordinances or parts of ordinances in conflict herewith are repealed. This ordinance shall be published according to law.

FIRST READING: _____, 2024.

SECOND READING AND ENACTMENT: _____, 2024.

APPROVED BY:

Bruce Fraley, Mayor

ATTEST:

Clerk of the City Council

Published this _____ day of _____, 2024.

PREPARED BY:

