

**CITY OF SHIVELY
CERTIFIED SUMMARY
ORDINANCE NO. 2, SERIES 2024
AN ORDINANCE AMENDING SHIVELY CODIFIED ORDINANCE CHAPTER 114,
SECTION 114.62, (ORD. NO. 5, SERIES 1994) RELATING TO EMERGENCY
SUSPENSION OF ALCOHOLIC BEVERAGE CONTROL LICENSE AND SECTION
114.99 PENALTY FOR OPERATING WITHOUT LICENSE**

I hereby certify that the foregoing amended ordinance provides authority to the City of Shively Alcoholic Beverage and Control Administrator (“ABC”) to order emergency suspensions of ABC licenses within the City of Shively for violations of ABC control laws that directly lead to or contributed to the death or serious physical injury of a person, violations for serving or selling alcohol to five or more minors within a twenty-four hour period, violations for discharge of a firearm on a licensed premises, violations for excessive complaints to law enforcement within a six month period and violations for manmade or natural events which could cause a reasonable person to believe the continued operation of a licensed premises would pose a serious threat to the public health, welfare, safety and/or security of the community.

The foregoing ordinance also provides the Shively ABC Administrator authority to obtain injunctive relief for those establishments operating without a license in the City of Shively.

The complete text of said ordinance may be read at the office of the Shively City Clerk, Shively City Hall, 3920 Dixie Highway, Shively, Kentucky 40216.



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CITY OF SHIVELY
ORDINANCE NO. 2, SERIES 2024
AN ORDINANCE AMENDING SHIVELY CODIFIED ORDINANCE CHAPTER
114, SECTION 114.62, (ORD. NO. 5, SERIES 1994) RELATING TO
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LICENSE

WHEREAS, the City of Shively recognizes the need to maintain strict oversight and regulation of alcoholic beverage control within the city, and

WHEREAS, Chapter 114 of the City of Shively Code of Ordinances represents a comprehensive regulatory framework aimed at preserving peace and ensuring protection of the public within the city, and

WHEREAS, any violation of Chapter 114 by a licensee warrants a prompt response by the City of Shively Alcoholic Beverage Control Administrator, and

WHEREAS, the recent rise in local, critical incidents on licensed premises has driven the need and urgency for more local regulations addressing the sale of alcoholic beverages, and

WHEREAS, when the Kentucky State Alcoholic Beverage Control denies a request for an emergency suspension of an alcoholic beverage control license, the City of Shively Alcoholic Beverage Control Administrator needs a local response to address the imminent risks and dangers posed by the licensee's continued operations within the city, and

WHEREAS, the Kentucky State Alcoholic Beverage Control does not have jurisdiction over any unlicensed premises in the Commonwealth of Kentucky, now therefore,

BE IT ORDAINED BY THE CITY OF SHIVELY:

SECTION 1: Chapter 114, (Shively Ordinance No. 5, Series 1994) of the Shively codified ordinances is hereby amended as follows:

§ 114.62 SUSPENSION, REVOCATION OF LICENSE

- (A) Pursuant to the procedure set forth in KRS 243.480 through 243.590, city licenses may be either revoked or suspended by the City Administrator upon the occurrence of:
- (1) Any violation of the provisions of this chapter or any other ordinance of the city;
 - (2) Any violation of any provision of state law in regard to alcoholic beverages or the rules and regulations of the State Alcoholic Beverage Control Board in regard thereto; or
 - (3) Any other cause, reason, or circumstance for which a state license may be revoked or suspended by the Board.

- (B) However, city licenses must be revoked by the City Administrator upon the occurrence of any cause or circumstance which requires revocation of state licenses pursuant to KRS 243.500 or the revocation of a state license to which a city license corresponds. Further, with the approval of the City Administrator, a licensee may, as an alternative and in lieu of part or all of the days of any suspension period, pay the following sums to the city as set forth in KRS 243.480 distillers, rectifiers, wineries, and brewers: \$1000.00 per day; wholesale liquor licenses: \$400.00 per day; wholesale beer licensees: \$400.00 per day; retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink: \$50.00 per day; distillers, wineries, and brewers for violations arising from their retail sales activities, including sales by distillers under licenses issued pursuant to KRS 243.086 and sales at retail under KRS 243.0305: \$50.00 per day; and all remaining licensees: \$50.00 per day.
- (C) The procedure for the revocation or suspension of a city license shall consist of a written notice signed by the City Administrator and mailed to the licensee at the address of the licensed premises by certified mail, describing the cause, circumstance, or occurrence and the time and date thereof for the city license may be revoked and indicating the time and place of a hearing in regard thereto at least five days thereafter at which the licensee and the representatives thereof shall be heard thereon. The hearing thereon shall be conducted by the City Administrator in the city and according to the procedure prescribed by the State Alcoholic Beverage Control Board for hearings by the Board as supplemented by the regulations of the City Administrator. The City Administrator shall control and make all decisions in regard to the introduction of evidence and shall hear all arguments in regard thereto. At the conclusion of the hearing, the City Administrator shall issue a written decision in regard thereto and mail a certified copy thereof to the licensee at the address of the licensed premises by certified or registered mail.
- (D) Upon approval from the City of Shively ABC Administrator, an emergency suspension may be ordered when it is reasonably believed that the health, welfare, safety, and/or security of the community is jeopardized by the continued operation of a licensee. In the instance of the immediate suspension of a license, licensees are entitled to an expedited hearing within three (3) business days with the ABC Administrator. The licensee may appeal the decision of the ABC Administrator to the Kentucky Department of Alcoholic Beverage Control within ten (10) business days of the order. An emergency suspension order will remain in effect until a final order is entered. A licensee may remain open during a suspension provided that alcohol is not being served and any alcohol inventory is secured.
- (E) Emergency situations which support a finding that continued operation of the license holder pending a hearing would constitute a threat to the public health, welfare, safety, and/or security of the community sufficient for emergency action are:

1. Violations of the alcoholic beverage control laws that directly led to or contributed to the death or serious physical injury of a person, regardless if the death or serious physical injury occurred on the licensed premises;
2. Violations of KRS 244.080(1) in which five (5) or more different minors were sold or served alcohol by the licensee within a twenty-four (24) hour time period;
3. Violation of KRS 244.125 wherein a firearm was discharged on the licensed premises;
4. Excessive complaints against a licensee requiring local law enforcement to expend an inordinate amount of resources in a six (6) month period;
5. Any other manmade or natural event which causes a reasonable person to believe the continued operation of the licensed premises would pose a serious threat to the public health, welfare, safety and/or security of the community.

§ 114.99 PENALTY

(A) Any person who, alone or acting through another, directly or indirectly, violates any of the provisions of this chapter for which no other penalty is provided shall be guilty of a misdemeanor and, for the first offense, shall be fined not less than \$100.00 nor more than \$200.00, or be imprisoned for not more than six months, or both. For a second and each subsequent violation, the person shall be fined not less than \$200.00 nor more than \$500.00 or be imprisoned for not more than six months, or both. The penalties provided for in this division (A) shall be in addition to the revocation of the offender's license. If the offender is a corporation, joint stock company, association, fiduciary, limited liability company, or other business entity recognized by law, the principal officer or officers responsible for the violation may be imprisoned. In addition, to the criminal penalties, herein, any person who violates the provisions of § 114.15 shall initially be issued a Cease-and-Desist letter and be given the opportunity to appear before the City of Shively ABC Administrator for an opportunity to cure the violations. Upon sufficient showing that the violation is ongoing, the City of Shively ABC Administrator may seek an injunction from Jefferson County Circuit Court to close the premises.

(B) Whoever violates division (A) of §114.43 or any provision of §114.45 shall, for the first offense, be fined not less than \$10.00 nor more than \$100.00 and each violation shall constitute a separate offense.

(C) Any person violating any provision of §114.40 shall be guilty of a misdemeanor and shall be for the first offense fined not less than one hundred (\$100.00) nor more than two hundred (\$200.00) dollars, or be imprisoned not more than six (6) months, or both, and for the second and each subsequent offense shall be fined not less than two hundred (\$200.00) dollars nor more than five hundred (\$500.00) dollars, or be imprisoned not more than six (6) months, or both.

(D) Any person, firm, corporation or entity who, directly or indirectly, violates any of the provisions of §114.48 shall be guilty of a misdemeanor and, for the first offense, shall be fined not less than one hundred (\$100.00) dollars nor more than two hundred (\$200.00) dollars, or be imprisoned for not more than six (6) months, or both. For a second and each subsequent violation, he shall be fined not less than two hundred (\$200.00) dollars nor more than five hundred (\$500.00) dollars or be imprisoned for not more than six (6) months, or both. The penalties provided for in this section shall be in addition to the suspension or revocation of the offender's license. If the offender is a corporation, joint stock company, association, or fiduciary, the principal officer or officers responsible for the violations may be imprisoned.

SECTION 2: The sections of this ordinance shall be severable, and any provision herein found to be unenforceable shall not affect the validity of the remaining provisions hereof.

SECTION 3: This ordinance shall take effect upon its adoption by the Shively City Council and publication as required by law.

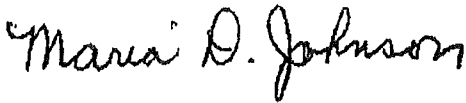
FIRST READING: APRIL 15, 2024

SECOND READING: MAY 6, 2024

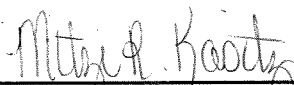
PASSED AND APPROVED: MAY 6, 2024

ENTERED THIS 6TH DAY OF MAY 2024.

Introduced by: Ms. Burton-McBroom



Maria Johnson, Mayor

Attest: 

Mitzi R. Kasitz, City Clerk

| Council | Yea | Nay |
|--------------------|------------|------------|
| Ms. Bizzle | ✓ | ___ |
| Ms. Burton-McBroom | ✓ | ___ |
| Mr. Gibson | ✓ | ___ |
| Ms. Thompson | ✓ | ___ |
| Mr. Vincent | ✓ | ___ |
| Ms. Wakaba | ✓ | ___ |