

**CITY OF FORT MITCHELL
KENTON COUNTY, KENTUCKY
ORDINANCE 2024-04**

AN ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 111 OF THE FORT MITCHELL CODE OF ORDINANCES RELATING TO ALCOHOLIC BEVERAGES.

WHEREAS, the Fort Mitchell City Council has hereto adopted an official ordinance related to alcoholic beverages.

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF FORT MITCHELL, COUNTY OF KENTON, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

SECTION I

The following sections in Chapter 111 of the City of Fort Mitchell Code of Ordinances are hereby amended to read as follows:

GENERAL PROVISIONS

§ 111.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(A) As used herein, the words and phrases defined in KRS 241.010 and 243.015 have the meanings indicated therein.

(B) The following words and phrases have the meanings indicated:

BOARD. The State Alcoholic Beverage Control Board established pursuant to KRS 241.030.

CITY ABC ADMINISTRATOR. The person appointed to the office of Alcoholic Beverage Control Administrator created and established by the city.

CITY LICENSE. A license established and authorized pursuant to the terms hereof.

CITY LICENSEE. A person who has been issued a city license pursuant to the terms hereof.

PERSON. Any natural person, corporation, partnership, joint venture or unincorporated association of persons or any combination thereof, and the shareholders, officers, agents, servants and employees thereof.

PREMISES. The premises described in the city license issued pursuant to the terms hereof and the application therefor.

STATE LICENSE. A license authorized by KRS 243.030 to 243.680.

TRAFFIC IN ALCOHOLIC BEVERAGES. Any action, business or transaction in regard to the production, storage, transportation, distribution, sale, delivery and transfer of alcoholic beverages.

('88 Code, § 111.01) (Am. Ord. 2013-16, passed 7-23-13)

§ 111.02 POSSESSION BY MINORS ON PRIVATE PROPERTY.

No person being the owner, occupant or otherwise having the care, custody or control of any property located in the city shall knowingly allow any person under the age of 21 years to remain on the property while in the possession of any alcoholic beverage or while consuming any alcoholic beverage.

('88 Code, § 111.02) (Ord. 1987-2, passed 2-18-87) Penalty, see § 111.99

LICENSES

§ 111.20 LICENSES; FEE SCHEDULE.

(A) Pursuant to the authority of KRS 243.070, there is hereby established a city license for each of the licenses authorized by that KRS section. The actions, business, and transactions authorized and permitted by the possession of a city license shall be the same as those permitted by the state license to which the city license corresponds. Except as provided in division (C), the renewal and expiration dates for city licenses shall be the same as the renewal and expiration dates for the corresponding state licenses. The fees and expiration dates for city licenses shall be as indicated in the following schedule:

<i>License Description</i>	<i>Fee Per Annum (unless otherwise indicated)</i>
Distiller's license	\$200
Rectifier's license <u>Class A (more than 50,000 gallons rectified annually)</u>	<u>\$412.50</u>
<u>Rectifier's license Class B (less than 50,000 gallons rectified annually)</u>	\$200
Wholesaler's distilled spirits and wine license	\$200
Quota retail package license	\$250
Quota retail drink license	\$300
Special temporary license per event	\$166.66
Nonquota type 1 retail drink license (includes distilled spirits, wine, and malt beverages)	\$2,000
Nonquota type 2 retail drink license (includes distilled spirits, wine, and malt beverages)	\$1,000
Nonquota type 3 retail drink license (includes distilled spirits, wine, and malt beverages)	\$300
Distilled spirits and wine <u>Special temporary alcoholic beverage auction license per event</u>	\$200 <u>0.00</u>
Special Sunday retail drink license	\$100
Extended hours supplemental license	\$2,000
Caterer's license	\$300
Bottling house or bottling house storage license	\$1,000
Brewer's license	\$200
Microbrewery license	\$200

Malt beverage distributor's license	\$100
Nonquota retail malt beverage package license	\$50
Nonquota type 4 retail malt beverage drink license	\$50
Malt beverage brew-on-premises license	\$100
Limited restaurant license (includes distilled spirits, wine, and malt beverages)	\$1,200
Limited golf course license	\$1,200
<u>Supplemental Bar License</u>	<u>Same as primary drink license for each license up to five (5), no fee for each supplemental license issued in excess of five (5)</u>

(B) No person shall cause, permit or engage in any of the actions, business or transactions authorized by city and state licenses within the city without both a valid city license and a valid state license therefor.

(C) Since the city license will be required to be renewed before the renewal date for the corresponding state license, the City ABC Coordinator shall issue a prorated provisional local license to cover the period of time between the expiration of the previous city license and the new date for the state renewal.

(Ord. 2013-16, passed 7-23-13; Am. Ord. 2016-04, passed 6-6-16) Penalty, see § 111.99

§ 111.21 FORM; CONTENT OF CITY LICENSE.

The city licenses authorized and established by this chapter shall each be evidenced by a document, the form and content of which shall be prescribed by regulation of the City ABC Administrator; provided, however, that each document evidencing a city license shall be of the same color and designation as that of the corresponding state license and shall comply with the provisions of KRS 243.440.

('88 Code, § 111.21) (Am. Ord. 2013-16, passed 7-23-13)

§ 111.22 APPLICATION; SUBMISSION AND ISSUANCE.

Subject to the limitations and restrictions described herein, city licenses shall be originally issued by the City ABC Administrator, and renewed by the City ABC Administrator upon the expiration thereof, upon receipt of the following documents and fees more than 30 days prior to the effective date of an original license, and more than 15 days prior to the expiration date of any license to be renewed:

(A) ~~The City will use the state application with information required by KRS 243.390. An written application therefor with the truth of the information, statements and representations therein attested by the signature and the oath or affirmation of the applicant. The form and content of an application shall be prescribed by regulation of the City ABC Administrator; however, provision for the following information, statements and representations shall and must be included therein:~~

- ~~(1) All information required by KRS 243.390 to be contained in the application for state licenses.~~
- ~~(2) The names, addresses, photographs and fingerprints of the applicant and all shareholders, officers, agents, servants and employees thereof.~~

(B) The approval of the applicant, the application and the premises described therein by the City ABC Administrator.

(C) Documentary evidence of a valid state license which corresponds to the city license for which the application is being made.

(D) The applicable paid fee, ~~paid in cash or by certified or cashier's check~~, for the city license which is the subject of the application.

('88 Code, § 111.22) (Ord. 2001-05, passed 8-29-01; Am. Ord. 2013-16, passed 7-23-13)

§ 111.23 APPROVAL OF APPLICATION.

Within 30 days of the date of the application for an original city license and 15 days of the date of an application for renewal of a city license, the City ABC Administrator shall, ~~by mail or personal delivery thereof~~, notify the applicant, in writing, of either the approval thereof or the disapproval thereof and a hearing in regard thereto.

('88 Code, § 111.23)

§ 111.24 DENIAL OF APPLICATION.

As is similarly set forth in KRS 243.430 and 450, the City ABC Administrator shall not approve any application for a city license if:

(A) The applicant, the application, or the premises described therein do not fully comply with the provisions of this chapter and all laws in regard to alcoholic beverages;

(B) The applicant and/or any shareholder, officer, agent, servant or employee thereof has caused, permitted or engaged in any act for which the revocation of a state or city license is authorized;

(C) The applicant and/or any shareholder, officer, agent, servant or employee thereof had a state license or city license which was revoked within two years of the date of the application, or the premises described therein where the premises or any portion thereof described in a state license or city license revoked during the time;

(D) Any statement or representation in the application is false; or

(E) In the exercise of sound discretion, the City ABC Administrator determines any cause or reason for refusing to approve an application reasonably related to the purpose and objective of this chapter and the state laws and regulations of the State Alcoholic Beverage Control Board. Among those factors that the City ABC Administrator shall consider in the exercise of his discretion are public sentiment in the area, number of licensed outlets in the area, potential for future growth, type of area involved, type of transportation available and financial potential of the area.

('88 Code, § 111.24)

§ 111.25 TRANSFER OF LICENSE.

A city licensee shall not assign or transfer any city license to any other person or premises unless that person and/or premises complies with all of the provisions of this chapter, the transfer of the license is approved by the City ABC Administrator and the transfer of the state license to which the city license corresponds is approved by the state. A transfer fee of \$10 shall be paid to the city for the transfer of the city license.

('88 Code, § 111.25) Penalty, see § 111.99

§ 111.26 GROCERY, GASOLINE SELLERS AND THE LIKE PROHIBITED FROM OBTAINING LICENSE.

(A) As prohibited in KRS 243.280, no city license shall be issued to sell malt beverages at retail within or upon any premises from which gasoline and lubricating oil are sold or from which the servicing and repair of motor vehicles is conducted, unless there is continuously maintained an inventory on the premises for sale at retail of not less than \$5,000 of food, groceries, and related products valued at cost.

(B) As prohibited by KRS 243.230, no city license shall be issued to sell distilled spirits or wine at retail by the drink or package from any premises used as or in connection with the operation of any business in which a substantial part of the commercial transaction consists of selling at retail staple groceries or gasoline or lubricating oil.

('88 Code, § 111.26) (Am. Ord. 2013-16, passed 7-23-13)

SALE OF ALCOHOLIC BEVERAGES

§ 111.40 HOURS.

(A) Pursuant to the authority of KRS 244.290 and KRS 244.480, no distilled spirits, wine, or malt beverages may be sold at retail, whether by the drink or by package, in the city between the hours of 2:30 a.m. and 6:00 a.m. of any day. On Sundays, no distilled spirits, wine, or malt beverages may be sold at retail by the drink in the city between the hours of 2:30 a.m. and 11:00 a.m., and no distilled spirits, wine, or malt beverages may be sold at retail by the package in the city on Sunday between the hours of 2:30 a.m. and 11:00 a.m.

(B) During the restricted hours set forth in division (A) of this section, no person who has a valid city license for the sale of distilled spirits or wine or malt beverages at retail shall cause, permit, or engage in any of the actions, business, or transactions authorized and permitted thereby unless otherwise provided by this section. During such times, all persons who have such city licenses shall cause the licensed premises to be closed and vacated by all persons except the applicant and those persons identified on the application for such city licenses or any supplements thereto as officers, agents, or employees of the person to whom city license was issued. All other persons shall vacate the licensed premises and remove themselves therefrom during such times; however, any person upon the premises who purchased any alcoholic beverages by the drink from the licensee within 30 minutes prior to any such times may remain upon the premises for a period not to exceed 30 minutes thereafter for the sole purpose of the consumption of the drink purchased.

(C) If a separate department of the licensed premises is maintained in a manner previously approved in writing by the ABC Administrator as being capable of being locked, closed off, and separated from the remainder of the licensed premises and all distilled spirits, wine, and malt beverages and all fixtures and apparatus connected with the acts of business and transactions authorized by the state licenses and city licenses for the retail sale of distilled spirits, wine, and malt beverages from such premises are located within the approved department, and such approved department is continuously kept locked, closed off, and separated from the remainder of the licensed premises during such times, the remainder of the licensed premises may remain open and any lawful activity may be conducted thereon during such times.

(D) All retail sellers that hold a valid license for the sale of distilled spirits, wine, or malt beverages within the jurisdictional boundaries of the city are hereby authorized to sell distilled spirits, wine, and malt beverages, whether by the drink or by package, according to the terms of their individual license, during the hours of 6:00 a.m. to 2:30 a.m. the following day, on every day except for Sundays. All retail sellers that hold a valid license for the sale of distilled spirits, wine, or malt beverages within the jurisdictional boundaries of the city are hereby authorized to sell distilled spirits, wine, and malt beverages, by the drink, according to the terms of their individual license, between the hours of 12:01 a.m. and 2:30 a.m. on Sundays; and between the hours of 11:00 a.m. on Sundays and 2:30 a.m. on Mondays. All retail sellers that hold a valid license for the sale of wine, spirits, or malt beverages within the jurisdictional boundaries of the city are hereby authorized to sell distilled

spirits, wine, and malt beverages, by package, according to the terms of their individual license, between the hours of 12:01 a.m. and 2:30 a.m. on Sundays; and between the hours of 11:00 a.m. on Sundays and 2:30 a.m. on Mondays.

('88 Code, § 111.40) (Am. Ord. 2004-17, passed 10-18-04; Am. Ord. 2006-13, passed 12-18-06; Am. Ord. 2007-07, passed 12-8-07; Am. Ord. 2013-09, passed 6-3-13) Penalty, see § 111.99

§ 111.41 COMPLIANCE WITH REGULATIONS AND PROHIBITIONS.

(A) At all times during which any person has a valid city license issued pursuant to the provisions hereof, that person shall fully comply with all of the rules, regulations, requirements and prohibitions set forth in this chapter.

(B) A city licensee shall comply fully with all of the provisions hereof and all of the rules and regulations of the City ABC Administrator in regard thereto; all provisions of the state statutes and the rules and regulations of the State Alcoholic Beverage Control Board in regard to the licensed premises and the actions, business and transactions conducted thereon subsequent to the issuance of a state license therefor and prior to the expiration, revocation or suspension thereof which are hereby incorporated herein and made applicable to all city licenses corresponding thereto, the premises described therein, and the actions, business and transactions conducted thereon; and the city licensee shall comply fully therewith.

('88 Code, § 111.41) Penalty, see § 111.99

§ 111.42 MAINTENANCE OF STATE LICENSE.

A city licensee shall maintain the state license to which the city license corresponds and fully comply with all state statutes and the rules and regulations of the State Alcoholic Beverage Control Board in regard thereto.

('88 Code, § 111.42) Penalty, see § 111.99

§ 111.43 DISPLAY OF REQUIRED LICENSES AND CERTAIN SIGNS.

As required by KRS 244.083, a city licensee who has a valid city retail distilled spirits, wine or malt beverage license shall cause to be displayed, in a conspicuous and prominent place on the licensed premises, each of the following documents so that they may be seen and observed by all persons entering the licensed premises:

(A) A sign or placard, at least eight inches by 11 inches in size, with the following message printed or displayed thereon in 30 point or larger type:

“Persons under the age of twenty-one (21) years are subject to a fine up to one hundred dollars (\$100) if they:

- (1) Enter licensed premises to buy or have served to them any alcoholic beverages.
- (2) Possess, purchase or attempt to purchase, or get another to purchase any alcoholic beverages.
- (3) Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.”

(B) All valid city licenses issued therefor and the state licenses to which they correspond. The failure to so display the licenses shall be prima facie evidence that no valid licenses have been issued or exist and all actions, business and transactions authorized thereby conducted on the premises are illegal and in violation of the provisions hereof and the state statutes and regulations of the State Alcoholic Beverage Control Board in regard thereto.

('88 Code, § 111.43) (Am. Ord. 2013-16, passed 7-23-13) Penalty, see § 111.99

Statutory reference:

For provisions concerning the display of state license required, see KRS 243.620, 244.270 and 244.360

§ 111.44 CRIMINAL CONDUCT ON PREMISES PROHIBITED.

A city licensee shall not cause, permit or engage in any conduct upon the licensed premises by either the commission of a prohibited act or the omission of a required act which is a crime or other violation of any law, rule or regulation of any governmental agency having jurisdiction thereof or any officer or agency thereof.

('88 Code, § 111.44) Penalty, see § 111.99

§ 111.45 CONDUCTING BUSINESS WITH MINOR.

As prohibited by KRS 244.080 and 244.085, no person shall cause, permit, encourage, or engage in any of the following actions in the city:

(A) The possession or consumption of any alcoholic beverages by any person under 21 years of age in or upon any licensed premises or public places; and

(B) The misrepresentation of the name, address, age or other identification of any person under 21 years of age for the purpose of obtaining alcoholic beverages.

('88 Code, § 111.45) Penalty, see § 111.99

§ 111.46 ILLEGAL SEXUAL CONDUCT; EXPOSURE OF HUMAN BODY.

No person shall cause, permit, encourage, display or engage in any obscene, private erotic matter or sexual conduct as defined in KRS 531.010. ~~of the following activities or display still or motion pictures thereof on licensed premises:~~

~~of the following activities or display still or motion pictures thereof on licensed premises:~~

~~—(A) Sexual conduct, as defined in KRS 531.010 (4).~~

~~—(B) Any acts, simulated acts, exhibitions, representations, depictions or descriptions of:~~

~~—(1) Human genitals in a state of sexual stimulation or arousal;~~

~~—(2) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts;~~

~~—(3) Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal;~~

~~—(4) Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function; or~~

~~—(5) Flagellation, mutilation or torture for purpose of sexual arousal, gratification, or abuse.~~

~~—(C) The appearance, display, depiction of:~~

~~—(1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point above the top of the areola; or~~

~~—(2) Human male genitals in a discernible turgid state even in completely and opaquely covered.~~

('88 Code, § 111.46) (Ord. 2000-3, passed 4-17-00) Penalty, see § 111.99

§ 111.47 BUSINESS TO BE CONDUCTED CONTINUOUSLY; EXCEPTIONS.

(A) A city licensee who has a valid city license shall be permitted to conduct the actions, business and transactions authorized thereby only upon the licensed premises.

(B) When no actions, business or transactions are conducted thereon for a period of 90 consecutive calendar days, the city license therefor shall become null and void and revoked by the City ABC Administrator unless:

(1) The city licensee is unable to continue in business at the premises for which a license is issued due to an act of God; casualty; the acquisition of the premises by any federal, state, city, or other governmental agency under power of eminent domain; acquisition of any private corporation through its power of eminent domain granted to it, whether the acquisition is voluntary or involuntary; or loss of lease through failure of the landlord to renew the existing lease; and

(2) Prior to the discontinuance of business at the licensed premises or immediately thereupon if it is due to an act of God, the city licensee delivers to the City ABC Administrator a written statement signed by the city licensee, and verified by the oath or affirmation thereof, indicating the discontinuance of business at the licensed premises for any of the causes or reasons described herein.

('88 Code, § 111.47) (Am. Ord. 2004-17, passed 10-18-04; Am. Ord. 2013-16, passed 7-23-13)

ADMINISTRATION AND ENFORCEMENT

§ 111.60 [RESERVED]

§ 111.61 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 ABC Administrator upon the occurrence of:

(1) Any violation of the provisions of this chapter or any other alcoholic beverage control 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 ABC 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 ABC Administrator, a licensee may, as an alternative and in lieu of part or all of the days of any suspension period, pay the sums to the city as set forth in KRS 243.480.

(C) The procedure for the revocation or suspension of a city license shall consist of a written notice signed by the City ABC 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 which 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 ABC 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 ABC Administrator. The City ABC 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 ABC 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.

('88 Code, § 111.62) (Ord. 2001-05, passed 8-29-01; Am. Ord. 2013-16, passed 7-23-13)

§ 111.99 PENALTY.

(A) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction thereof in a court of competent jurisdiction, be sentenced to pay a fine for each offense or violation of no more than \$500.

(B) Any person found to be in violation of § 111.02 shall be guilty of a misdemeanor and shall be fined not more than \$300 or be imprisoned for not more than 90 days, or both. (Ord. 1987-2, passed 2-18-87)

(C) Any person who violates the distillers license fee provision of § 111.20 shall be guilty of a misdemeanor and shall, upon conviction and in accordance with KRS 243.990 (2), be sentenced to pay a fine of not less than \$100 nor more than \$200, or sentenced to imprisonment for no more than six months, or both for the first offense. For the second offense, the person shall be fined not less than \$200 nor more than \$500 or sentenced to imprisonment for no more than six months, or both. On the third and each subsequent offense, the person shall be sentenced to pay a fine of not less than \$500 nor more than \$5,000 or sentenced to imprisonment for not more than five years, or both.

(D) Any person who violates any provision of § 111.20 other than as discussed in division (B) above, or any provision of §§ 111.21 through 111.26, 111.40 through 111.42, 111.44 or 111.45 (A) shall be guilty of a misdemeanor and shall, upon conviction and in accordance with KRS 243.990 (1) and 244.990 (1), be fined not less than \$100 nor more than \$200, or be imprisoned for no more than six months, or both for the first offense. On the second and each subsequent offense, the person shall be fined not less than \$200 nor more than \$500, or be imprisoned for no more than six months, or both.

(E) Any person who violates any provision of § 111.43 shall be guilty of a violation and shall, upon conviction and in accordance with KRS 244.990 (5), be fined not less than \$10 nor more than \$100.

(F) Any person who violates any provision of § 111.45 (B) shall be guilty of a violation and shall, upon conviction and in accordance with KRS 244.990 (5) and (6), be fined not less than \$10 nor more than \$100 for misrepresentation of age. For use of a false, fraudulent or altered identification card, paper or other document to purchase, attempt to purchase, or otherwise obtain any alcoholic beverage, the person shall be guilty of a misdemeanor and shall be fined not less than \$50 nor more than \$500 for a first offense. For a second and each subsequent offense, the person shall be fined not less than \$200 nor more than \$2,000.

('88 Code, § 111.99)

(G) Any violation of this chapter is hereby classified as a civil offense, pursuant to Chapter 41 and KRS 65.8808, and such classification is intended, and shall be construed, to provide an additional or supplemental means of obtaining compliance with the applicable code sections, and nothing contained herein or in Chapter 41 shall prohibit the enforcement of this chapter by any other means authorized by law.

(H) If a citation for a violation of this chapter is not contested by the person charged with the violation, the civil fine to be imposed for each offense shall be \$50 for the first offense, \$90 for the second offense, and \$210 for the third, and thereafter, offense.

(I) If a citation is contested and a hearing before the Code Enforcement Board is required, the maximum civil fine which may be imposed at the discretion of the Board shall be from \$20 to \$200 for the first offense, from \$60 to \$600 for the second offense, and from \$180 to \$1,800 for the third, and thereafter, offense.

(J) Each section of the ordinance violated shall be considered a separate fineable offense. If two or more sections of the ordinance are violated, the fines shall be cumulative and be enforced under the same citation. Each day a violation exists shall be considered a separate offense upon issuance of a separate citation.

(Ord. 1999-13, passed 8-17-99)

SECTION II

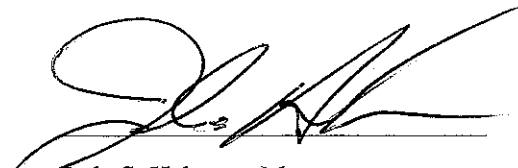
All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, if any, hereby repealed.

SECTION III

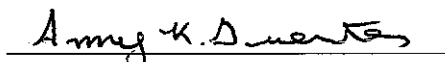
The Provisions of this Ordinance are severable and the invalidity of any provision of this Ordinance shall not affect the validity of any other provisions hereof, and such other provisions shall remain in full force and effect as long as they remain valid in the absence of that provision determined to be invalid.

SECTION IV

This Ordinance shall be in full force and effect from and after its passage and publication according to law and said publication may be in summary form.


Jude S. Hehman, Mayor

ATTEST:


Amy Guenther, City Clerk/Treasurer

FIRST READING: 6/3/2024

SECOND READING: 6/24/2024

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