

ORDINANCE RELATING TO BUSINESS AND OCCUPATION LICENSE FEES

SUMMARY:

AN ORDINANCE REGARDING THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF A ONE-PERCENT (1%) OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN THE CITY OF HENDERSON, WHICH ORDINANCE INCLUDES DEFINITIONS; LICENSE APPLICATION REQUIREMENT; PAYMENT OF OCCUPATIONAL LICENSE TAX ON COMPENSATION OF EMPLOYEES FOR WORK PERFORMED WITHIN CITY, AND ON NET PROFITS OF BUSINESS CONDUCTED WITHIN CITY; EXEMPTED ACTIVITIES; APPORTIONMENT PROVISIONS; EMPLOYERS WITHHOLDING REQUIREMENT; OCCUPATIONAL LICENSE RETURNS REQUIREMENT; EXTENSIONS PROVISION; REFUNDS PROVISIONS; AUDIT PROVISIONS; ADMINISTRATIVE PROVISIONS; REGULATIONS OF FINANCE DEPARTMENT; ESTABLISHMENT OF BOARD OF APPEALS; CONFIDENTIALITY OF INFORMATION; USE OF TAX; PENALTIES; SEVERABILITY OF PROVISIONS; BEGINNING DATE OF ORDINANCE ON JANUARY 1, 2006; AND REPEAL OF EXISTING BUSINESS LICENSE ORDINANCE

BE IT ORDAINED by the City of Henderson, Kentucky, that Article III. *Business Licenses*, of Chapter 21, *Taxation*, of the City's Code of Ordinances, is hereby repealed in its entirety, and the following provisions are hereby enacted as the new Article III of Chapter 21 of the Code of Ordinances, to-wit:

ARTICLE III. BUSINESS AND OCCUPATIONAL LICENSE FEES

Sec. 21-31. Definitions.

For the purposes of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (a) **Business Entity.** Each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted.

- (b) **Business.** Any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. **Business** shall also include specifically but not exclusively the rental or offering of rent of any property, real or personal, having a site in the city; but shall not include the usual activities of board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions. **Business** shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes.
- (c) **City.** The City of Henderson, Kentucky.
- (d) **Compensation.** Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted to include the following:
- (1) Any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
 - (2) Any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.
- (e) **Conclusion of the Federal Audit.** The date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable.
- (f) **Employee.** Any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

- (g) **Employer.** The person for whom an individual performs or performed any service, of whatever nature, as tile employee of such person, except that:
- (1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term **Employer** means the person having control of the payment of such wages, and
 - (2) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term **Employer** means such person;
- (h) **Final Determination of the Federal Audit** The revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.
- (i) **Fiscal Year.** An accounting period of 12 months ending on the last day of any month other than December.
- (j) **Internal Revenue Code.** The Internal Revenue Code in effect on December 31, 2005, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2005, that would otherwise terminate.
- (k) **Net Profit.** Gross income, as defined in Section 61 of the Internal Revenue Code, minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:
- (1) Include any amount claimed as a deduction for state tax or local tax that is computed, in whole or in part, by reference to gross or net income and that is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
 - (2) Include any amount claimed as a deduction that directly or indirectly is allocable to income that is either exempt from taxation or otherwise not taxed;
 - (3) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

- (4) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and
- (5) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory (laws of the United States).
- (l) **New Business Entity.** New business entity shall be defined as either: (1) a business with no prior revenue generated from sales or services within the city; or (2) an existing business operating under entirely new ownership (note: neither changing the name of an existing business, nor a change of members in a partnership, nor incorporation of an existing business, nor any other restructuring of an existing business shall constitute a new business entity).
- (m) **Real Property.** All types of real estate including commercial property, residential property, and farm property.
- (n) **Return or Report.** Any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the city.
- (o) **Sales Revenue.** Receipts from the sale, lease, or rental of goods, services, or property.
- (p) **Tax District.** Any city of the first through fifth class, county, urban county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes.
- (q) **Taxable Net Profit.** In case of a business entity having payroll or sales revenue only within the city means net profit as defined above.
- (r) **Taxable Net Profit.** In case of a business entity having payroll or sales revenue both within and without the city means net profit as defined above, and as apportioned under Sec. 21-35.
- (s) **Taxable Year.** The calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

Sec. 21-32. Occupational License Application and Certificate Required.

- (A) Every business entity that intends to operate in the City of Henderson and every employer required to withhold the occupational license tax from an employee's compensation shall be required to apply for an occupational license from the city before the commencement of business. The applicant shall complete and execute the City of Henderson Application for Occupational License and a new business entity shall remit a one-time payment of \$25 to cover administrative costs associated herewith unless exempt under Sec. 21-34. Upon acceptance of the application, the city will issue to the licensee an occupational license certificate, which shall contain an identifying number for tax reporting purposes. Licensees are required to notify the city of any changes in address, the cessation of business, or any other changes that render the information supplied to the city in the license application inaccurate.
- (B) Each year, the city shall issue an occupational license certificate to each business entity licensed under this chapter. The certificate shall show the year, for which it is issued, the name of the business entity to which it is issued, and the address or location of the business entity being licensed. Each business entity shall maintain the license certificate at its business location in the city, if located in the city.

Sec. 21-33 Occupational License Tax Payment Required.

- (A) Except as provided in Sec. 21-34, every person or business entity engaged in any business, trade, occupation, or profession and any person or business entity that makes a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the city an annual occupational license tax for the privilege of engaging in such activities within the city. The occupational license tax shall be measured by one percent (1%) of:
 - (1) All compensation paid or payable in the city for work done or services performed or rendered in the city by every resident and nonresident who is an employee; and
 - (2) The net profits from business conducted in the city by a resident or nonresident business entity, or \$25.00, whichever is greater.

- (B) If any business entity dissolves, ceases to operate, or withdraws from the city during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the city.

Sec. 21-34 Exempted Activities.

- (A) Nonprofit organizations, as determined by the Internal Revenue Service approval of not-for-profit status, must file an Application for Occupational License. Upon the filing of an application by a nonprofit organization and confirmation of its not-for-profit status, the Finance Department will issue an occupational license certificate to this organization.
- (B) The following business entities are exempt from the net profit occupational license tax and are not required to file a city Occupational License Return, except as otherwise noted:
 - (1) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue, pursuant to the provisions of KRS 136.120. To be entitled to this exemption, companies are required to show that they are actually assessed as public service companies by the Kentucky Revenue Cabinet and that they in fact pay an ad valorem tax based on this assessment. Licensees whose businesses are predominantly non-public service but who are also engaged in public service activity are required to pay a license tax on their net profits derived from the non-public service activities apportioned to the city.
 - (2) Life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky. (See KRS 136.320 (4), (5)).
 - (3) Banks, trust companies, combined bank and trust companies, combined trust, banking and title businesses, and savings and loan associations, whether state or federally chartered, that are expressly exempted by KRS 92.300.

- (4) Any business entity engaged in the letting or rental of any dwelling unit in the city that owns no more than one dwelling unit for lease in the city and whose rents from all dwelling units owned, whether within or outside the city when taken together, do not exceed \$6,000.
 - (5) Persons whose sole business activity is the manufacture of and/or sale of alcoholic beverages. **Persons engaged in the business of manufacturing and/or selling alcoholic beverages are required to file a return, but may exclude the portion of their net profits derived from such manufacturing and/or sale of alcoholic beverages.**
 - (6) Any usual activities of boards of trade, chambers of commerce, trade associations or unions, community chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes, or for the prevention of cruelty to children or animal; or clubs or fraternal organizations operated exclusively for social, literary, educational, or fraternal purposes where no part of the income or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual. To qualify for this exemption, the organization must submit satisfactory proof of their exempt status for federal income tax purposes. If any part of the earnings of such business inures to the benefit of any person, it shall be sufficient to defeat the exemption. If an organization earns "unrelated business income," as defined and administered in § 511 of the Internal Revenue Code, a net profit license tax is assessed on the "unrelated business income."
 - (7) The farmer's market as provided for in Chapter 11.5, Article II, of the City's Code of Ordinances.
- (C) The following persons and payments are exempt from the employee occupational license tax:
- (1) Persons whose sole wages, salaries, commissions, or other wages and other compensations earned in the city are derived from service as members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training.

- (2) Compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
- (3) Periodical payments, commonly recognized as old-age or retirement pensions, including Social Security payments, made to persons retired from service after reaching a specified age or after a stated period of employment, are not subject to the license tax.
- (4) Income and dividend payments are not subject to the license tax.
- (5) Payments made to employees under a disability, sickness or accident plan are not subject to the license tax. Unemployment compensation payments by the state or other agency are not subject to the license tax. This provision does not include federally taxed sick leave paid to employees.
- (6) Amounts received by employees under the Workers' Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or settlement on account of such disability, are not subject to the occupational license tax.
- (7) No occupational license tax shall be required of domestic servants engaged as independent contractors in private homes. However, business and occupational license fees shall be required for businesses conducting cleaning services and for employees of such cleaning services.

Sec. 21-35. Apportionment.

- (A) Except as provided in division (D) of this section, net profit shall be apportioned as follows:
 - (1) For business entities with both payroll and sales revenue in more than one tax district, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in division (B) of this section, plus the sales factor, described in division (C) of this section, and the denominator of which is two; and
 - (2) For business entities with sales revenue in more than one tax district, by multiplying the net profit by the sales factor as set forth in division (C) of this section.

- (B) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the city during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the city based on the time the individual's service is performed within the city.
- (C) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the city during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.
- (1) The sale, lease, or rental of tangible personal property is in the city if:
- (a) The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the city regardless of the f.o.b. point or other conditions of the sale; or
 - (b) The property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States government.
- (2) Sales revenues, other than revenues from the sale, lease, or rental of tangible personal property or the lease or rental of real property, are apportioned to the city based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the city and the denominator of which is the total time spent performing that income-producing activity.
- (3) Sales revenue from the sale, lease, or rental of real property is allocated to the tax district where the property is located.
- (D) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the city, the business entity may petition the city or the city may require, in respect to all or any part of the business entity's business activity, if reasonable:
- (1) Separate accounting;
 - (2) The exclusion of any one or more of the factors;

- (3) The inclusion of one or more additional factors which will fairly represent the business entity's business activity in the city; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of net profit ("alternate apportionment method"). The city must approve any alternate apportionment method prior to its implementation by the business entity. Once an alternate apportionment method is approved by the city, the business entity must apply such apportionment scheme in all future tax years, unless otherwise directed by the city.
- (E) All partnerships, S corporations, limited liability companies, and all other entities where income is "passed through" to the owners are subject to this ordinance. The occupational license tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.
- (F) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government, and the entity shall employ the same methods of accounting required for federal income tax purposes.

Sec. 21-36 Employers To Withhold.

- (A) Each employer who employs one or more persons working within the city is required to apply with the city for an occupational license tax reporting number, and in such process shall complete and execute the City of Henderson Application for Occupational License on behalf of each of its employees. The employee is not required to apply with the city unless the employee has earned income other than "wages and other compensation."
- (B) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation due each employee at the time of payment by the employer an occupational license tax calculated under Sec. 21-33.
- (C) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the city, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the city. The license tax shall be computed by obtaining the percentage of compensation for work performed or services rendered within the city as it bears to the total wages and compensation paid or payable. For the city to verify the accuracy of a

taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

- D) Subject to division (E) below, at a minimum, every employer required to deduct and withhold tax under this section shall make a return and report to the city, and pay to the city, the tax required to be withheld under this section on a quarterly basis, on or before the last day of the months of January, April, July, and October following the withholding period.
- (E) For each employer who employs persons within the city for which the occupational license tax is required to be withheld from all employee compensation and the amount withheld by the employer exceeds \$3,000 for any one of the preceding four quarters, the employer shall remit the occupational license tax required to be withheld from employees on a monthly basis, with taxes due on or before the fifteenth day of the month following the month in which the wages shall have been paid by said employer.
- (F) Every employer who fails to withhold or pay to the city any sums required to be withheld by this ordinance shall be personally and individually liable to the city for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (G) The city shall have a lien upon all the property of any employer who fails to withhold or pay over to the city sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the city, the lien shall commence as of the date the amounts withheld were required to be paid to the city. If the employer fails to withhold these sums, the lien shall commence at the time the liability of the employer is assessed by the city.
- (H) Every employer required to deduct and withhold tax under this section shall annually, on or before February 28 of each year, complete and file with the city an Annual Report of Earnings reporting the tax withheld in each tax district where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information, as determined by the city, shall be submitted.
- (I) Every Professional Employer Organization ("PEO") and every employer with an employee leasing arrangement shall include a separate Annual Report of Earnings for each client or co-employer listing the client's or co-employer's name, address, and telephone number.

- (J) Every employer shall furnish each employee a statement, on or before January 31 of each year, showing the amount of compensation and occupational license tax deducted by the employer from the compensation paid to the employee for payment to the city during the preceding calendar year.
- (K) The president, vice president, secretary, treasurer, or other person holding an equivalent corporate office of any business entity subject to this section shall truthfully account for, or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the city, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated.
- (L) Notwithstanding divisions (F) and (J) of this section, every employee receiving compensation in the city subject to the tax imposed under Sec. 21-33 shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer.

Sec. 21-37. Returns Required.

- (A) Except as may be provided differently in Sec. 21-34, every business entity and employer required to obtain an occupational license from the city shall file for the preceding taxable year a city Occupational License Return, properly signed and completed in proper detail, regardless of whether income is realized, a license tax liability exists, or the business is actively engaged during the tax year. The return is due on April 15 of each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year.
- (B) Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity to audit the return, the city may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof. The city may also require copies of reports of adjustments made by the federal government and/or other financial documents maintained by the business entity.

- (C) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules and regulations as the city from time to time may prescribe. Whenever the city deems it necessary, the city may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability of the business entity.
- (D) The city may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge of the business entity or in the premises.
- (E) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the city at the time the occupational license tax return is filed with the city.
- (F) When a return in form and substance satisfactory to the city Finance Department is not filed by an employer and/or the license taxes are not paid to the city by such employer, the employee for whom no return has been filed and/or no payment has been made shall file a Request for Refund of Earnings Tax or Additional Payment Due with the city Finance Department on or before January 31, annually, showing in the return his or her compensation subject to the license tax during the preceding calendar year. The employee submitting the form shall provide the original copy of the statement furnished him or her by his or her employer. This statement must show all of the compensation earned by him or her, wherever employed, during the period for which such return is made. In addition to the compensation earned by him or her, such return shall show such other pertinent information as may be required by the city Finance Department. Each person making a return required by this section shall at the time of filing the appropriate form pay the city the amount of license tax due under this subchapter; provided, that any portion of the license tax deducted by the employer shall be credited on the return and only the balance, if any, shall be due and payable at the time of filing said return. The amount of any license taxes that were due in each year, as provided in this subchapter, shall bear interest from the date the same became due at the rate of 1% per month, or fraction thereof for partial months, until paid, and the employer failing to pay the same when due shall also pay the penalty imposed under Sec. 21-46.

- (G) Every business entity making payments of \$600 or more to persons other than employees for services performed within the city are responsible for maintaining the records of those payments and for completing Form 1099 SF, Statement of Non-Employee Compensation, on or before February 28 of the year following the close of the calendar year in which such compensation was paid. Persons or business entities not required to remit a Form 1099 remain liable to the city to remit equivalent information for any compensation made to persons or business entities that are not employees.

Sec. 21-38. Extensions.

- (A) The Finance Director may grant any business entity an extension of not more than six months for filing its return, unless a longer extension has been granted by the Internal Revenue Service or a longer extension is agreed to by the city and the business entity. An extension will only be granted if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax. For an extension of other than the first automatic extension, the business entity must submit to the city a copy of the extension with evidence showing that the IRS has accepted and approved the requested extension.
- (B) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to 12% per annum simple interest on the tax shown due on the return, but not been previously paid, from the time the tax was due until the return is actually filed and the tax paid to the city. A fraction of a month is counted as an entire month.

Sec. 21-39. Refunds.

- (A) Where there has been an overpayment of tax under Sec. 21-36, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the city from the employer within two years from the date the overpayment was made.
- (B) An employee, who is compensated for activities performed outside the city, based on time spent outside the city, and whose employer has withheld and remitted to this city the occupational license tax on the compensation attributable to activities performed outside the city, may file for a refund within two years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computations sufficient to verify the refund claim. The city may confirm with the employer the percentage of time spent outside the city and the amount of compensation attributable to activities performed outside the city prior to approval of the refund.

Sec. 21-40 Audit Provisions.

- (A) As soon as practicable after each return is received, the city may examine and audit the Occupational License Return. If the amount of tax computed by the city is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the city within five years from the date the return was filed, except as otherwise provided in this division.
- (1) In the case of a failure to file a return or of a fraudulent return, the city may assess the additional tax at any time and there shall be no time limitations for bringing an action under this chapter.
 - (2) In the case of a return where a business entity understates net profit, or omits an amount properly includable in net profits, or both, which understatement or omission, or both, is in excess of 25% of the amount of net profit stated in the return, the additional tax may be assessed at any time within six years after the return was filed.
 - (3) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six months from the date the city receives the final determination of the federal audit from the business entity, whichever is later.
 - (4) The times provided in this subsection may be extended by agreement between the business entity and the city. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.
- (B) Every business entity shall submit a copy of the final determination of the federal audit within 30 days of the conclusion of the federal audit.

Sec. 21-41. Administrative Provisions.

- (A) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this chapter.
- (B) Any tax collected pursuant to the provisions of this subchapter may be refunded or credited within two (2) years of the date prescribed by law for the

filing of a return or the date the money was paid to the city, whichever is the later, except that:

- (1) In any case where the assessment period contained in Sec.21-40 has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.
 - (2) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later. For the purposes of this subsection and division (B)(1) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.
- (C) The authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested exclusively in the city.

Sec. 21-42. Regulations.

The Finance Department is charged with the enforcement of the provisions of this chapter and is empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including but not limited to provisions for the re-examination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the rules and regulations promulgated by it shall be binding on all licensees and employers affected.

Sec. 21-43. Board Of Appeals.

The Mayor, with the approval of the city Commission, shall appoint a Board of Occupational License Appeals, which shall consist of the Director of Finance, the city Manager or his or her designee, and two (2) citizens of the city. These individuals shall serve on the Board for a term of two years, which shall run concurrently with the terms of the City Commission. The Board of Occupational License Appeals shall be empowered to hear appeals from licensees or supposed licensees and shall decide each appeal on evidence provided by the licensee and the city. The Board may, based upon such evidence, render decisions on questions of interpretation of this ordinance, on questions of allocation of payroll and net profits, on proceedings of delinquent tax collections, and on the waiver of penalties assessed. The decisions of the Board of Occupational License Appeals are appealable to the Board of Commissioners.

Sec. 21-44. Information To Remain Confidential.

- (A) No present or former employee of the city shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the city or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the city from testifying in any court or by deposition, or from introducing as evidence returns or reports filed with the city, in an action for violation of a tax law of the city or other tax district or in any action challenging the city's tax laws or in any action in which the income of the business entity is a relevant issue at trial.
- (B) The city reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Furthermore, that the city may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.
- (C) In addition, the city is empowered to execute similar reciprocity agreements as described in division (B) of this section with any other taxing entity should there be a need for exchange of information to effect diligent enforcement of this subsection or the ordinances of the other taxing entity.

Sec. 21-45 Use Of Occupational License Tax.

All money derived from the license tax under the provisions of this chapter shall be paid to the city and placed to the credit of the city's general revenue fund.

Sec. 21-46 Penalties.

- (A) A business entity subject to tax on net profits may be subject to a penalty equal to 5% of the tax due for each calendar month, or fraction thereof for partial months, if the business entity:
 - (1) Fails to file any return or report on or before the due date prescribed for filing or as extended by the city; or
 - (2) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.
 - (3) The total penalty levied pursuant to this division (A) shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.
- (B) Every employer who fails to file a return or pay the tax on or before the time prescribed under Sec. 21-33 and Sec. 21-36 may be subject to a penalty in an amount equal to 5% of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this division (B) shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.
- (C) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to 12% per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the city. A fraction of a month is counted as an entire month.
- (D) Every tax imposed by this chapter, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.
- (E) The city may enforce the collection of the occupational tax due, and any taxes, penalties, and interest, as provided herein, by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of Sec. 21-31 through Sec. 21-45.
- (F) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

- (G) Any person who willfully aids or assists in, or procures, counsels, or advises in the preparation or presentation of a return, affidavit, claim, or other document required under or submitted in connection with Sec. 21-31 through Sec. 21-45, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.
- (H) A return, for the purpose of this section, shall mean and include any return, declaration, or form prescribed by the city and required to be filed with the city by the provisions of Sec. 21-31 through Sec. 21-45 or by the rules of the city or by written request for information to the business entity by the city.
- (I) Any person violating the provisions of Sec. 21-44 by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than \$500 or imprisoned for not longer than six months, or both.
- (J) Any person violating the provisions of Sec. 21-44 by divulging confidential taxpayer information shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Sec. 21-47 Severability.

Each section and each provision of each section of this ordinance are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, is held by a court of law to be unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this ordinance, it being the legislative intent to ordain and enact provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

Sec. 21-48 Beginning Date.

The provisions of this ordinance shall become in effect on January 1, 2006.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

On the first reading of this ordinance, it was moved by Commissioner Robert M. Mills, seconded by Commissioner Michele E. Deep, that the ordinance be adopted on its first reading.

On roll call the vote stood:

Commissioner Mills:	<u>AYE</u>	Commissioner Hall:	<u>AYE</u>
Commissioner Sights:	<u>NAY</u>	Mayor Lackey:	<u>AYE</u>
Commissioner Deep:	<u>AYE</u>		

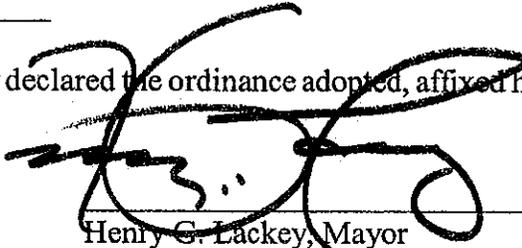
WHEREUPON, Mayor Lackey declared the ordinance adopted on first reading and ordered that it be presented for second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner Robert N. Hall, seconded by Commissioner Robert M. Mills, that the ordinance be adopted.

WHEREUPON, the vote was called. On roll call the vote stood:

Commissioner Mills:	<u>AYE</u>	Commissioner Hall:	<u>AYE</u>
Commissioner Sights:	<u>NAY</u>	Mayor Lackey:	<u>AYE</u>
Commissioner Deep:	<u>AYE</u>		

WHEREUPON, Mayor Lackey declared the ordinance adopted, affixed his signature and the date and ordered it be recorded.

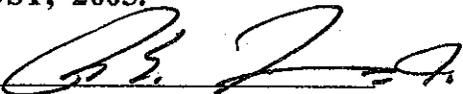


Henry G. Lackey, Mayor
Date: September 6, 2005

ATTEST:


Carolyn Williams, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS 19th DAY OF AUGUST, 2005.

By: 
Joseph E. Ternes, Jr.
City Attorney

ORDINANCE AMENDING OCCUPATIONAL LICENSE ORDINANCE

SUMMARY: ORDINANCE AMENDING SEC. 21-43. BOARD OF APPEALS OF ARTICLE III, BUSINESS AND OCCUPATIONAL LICENSE FEES, OF ORDINANCE NO. 17-05, BY CHANGING MEMBERSHIP AND TERMS OF MEMBERS OF BOARD OF APPEALS, AND MAKING ITS DECISION FINAL

BE IT ORDAINED by the City of Henderson, Kentucky that Sec. 21-43, *Board of Appeals* of Article III, *Business and Occupational License Fees*, of Ordinance No. 17-05 of the Code of Ordinances, is hereby amended as follows:

Sec. 23-43. Board of Appeals.

The Mayor, with the approval of the City Commission, shall appoint a Board of Occupational License Appeals, ~~which shall consist of the Director of Finance, the city Manager or his or her designee, and two (2) citizens of the city. These individuals shall serve on the Board for a term of two years, which shall run concurrently with the terms of the City Commission.~~ comprised of three (3) members as follows: One (1) City Commissioner, and two (2) citizen members who are residents of the City. The term of one citizen member shall be three (3) years, and the term of one citizen member shall be four (4) years. Whenever a vacancy occurs, an appointment shall be made for the remainder of the unexpired term. The Board of Occupational License Appeals shall be empowered to hear appeals from licensees or supposed licensees and shall decide each appeal on evidence provided by the licensee and the city. The Board may, based upon such evidence, render decisions on questions of interpretation of this ordinance, on questions of allocation of payroll and net profits, on proceedings of delinquent tax collections, and on the waiver of penalties assessed. The decisions of the Board of Occupational License Appeals ~~are appealable to the Board of Commissioners.~~ shall be final.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

This ordinance shall become effective upon its legal adoption.

On first reading of the foregoing ordinance, it was moved by Commissioner Robert M. Mills, seconded by Commissioner Jim White; that the ordinance be adopted on its first reading.

On roll call the vote stood:

Commissioner White:	<u>AYE</u>	Commissioner Pruitt:	<u>NAY</u>
Commissioner Farmer:	<u>AYE</u>	Mayor Davis:	<u>NAY</u>
Commissioner Mills:	<u>AYE</u>		

PUBLICATION DATE: November 23, 2010 FIRST READING: 10/26/2010
SECOND READING: 11/09/2010

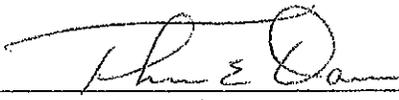
WHEREUPON, Mayor Davis declared the ordinance adopted on first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner Mike Farmer, seconded by Commissioner Robert M. Mills, that the ordinance be adopted.

WHEREUPON, the vote was called. On roll call the vote stood:

Commissioner White:	<u>Absent</u>	Commissioner Pruitt:	<u>Absent</u>
Commissioner Farmer:	<u>Aye</u>	Mayor Davis:	<u>Nay</u>
Commissioner Mills:	<u>Aye</u>		

WHEREUPON, Mayor Davis declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

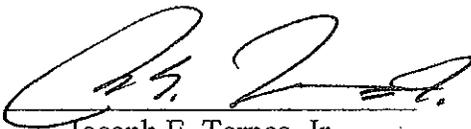


Thomas E. Davis, Mayor
Date: November 9, 2010

ATTEST:

Carolyn Williams
Carolyn Williams, City Clerk

**APPROVED AS TO FORM AND
LEGALITY THIS 21st DAY OF
OCTOBER, 2010.**

By: 

Joseph E. Ternes, Jr.
City Attorney

ORDINANCE NO. 10-11

ORDINANCE AMENDING OCCUPATIONAL LICENSE ORDINANCE

SUMMARY: ORDINANCE AMENDING SEC. 21-43., BOARD OF APPEALS, OF ARTICLE III., BUSINESS AND OCCUPATIONAL LICENSE FEES, BY ADDING AN ALTERNATE MEMBER

BE IT ORDAINED by the City of Henderson, Kentucky that Sec. 21-43, *Board of Appeals* of Article III, *Business and Occupational License Fees*, of the Code of Ordinances, is hereby amended as follows:

Sec. 21-43. Board of Appeals.

The Mayor, with the approval of the City Commission, shall appoint a Board of Occupational License Appeals, comprised of three (3) members as follows: One (1) City Commissioner, and two (2) citizen members who are residents of the City. The term of one citizen member shall be three (3) years, and the term of one citizen member shall be four (4) years. There shall also be an alternate member appointed by the Mayor, with the approval of the City Commission, who shall serve in the transaction of the board's business whenever a regular board member as named above is absent or unable to serve for whatever reason. The alternate member shall be a resident of the City and appointed for a term of three (3) years and shall possess the full authority of a regular board member when he or she is serving in the absence of a regular member. Whenever a vacancy occurs, an appointment shall be made for the remainder of the unexpired term. The Board of Occupational License Appeals shall be empowered to hear appeals from licensees or supposed licensees and shall decide each appeal on evidence provided by the licensee and the city. The Board may, based upon such evidence, render decisions on questions of interpretation of this ordinance, on questions of allocation of payroll and net profits, on proceedings of delinquent tax collections, and on the waiver of penalties assessed. The decisions of the Board of Occupational License Appeals shall be final.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

This ordinance shall become effective upon its legal adoption.

On first reading of the foregoing ordinance, it was moved by Commissioner Alan Taylor, seconded by Commissioner Mike Farmer, that the ordinance be adopted on its first reading.

On roll call the vote stood:

Commissioner Farmer:	<u>AYE</u>	Commissioner Mills:	<u>AYE</u>
Commissioner Pruitt:	<u>AYE</u>	Mayor Austin:	<u>AYE</u>
Commissioner Taylor:	<u>AYE</u>		

PUBLICATION DATE: May 28, 2011

FIRST READING: 05-10-11
SECOND READING 05-24-11

ORDINANCE NO. 10-11

WHEREUPON, Mayor Austin declared the ordinance adopted on first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner Alan Taylor, seconded by Commissioner Mike Farmer, that the ordinance be adopted.

WHEREUPON, the vote was called. On roll call the vote stood:

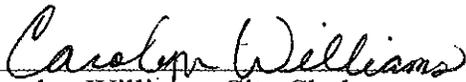
Commissioner Farmer:	<u>AYE</u>	Commissioner Mills:	<u>AYE</u>
Commissioner Pruitt:	<u>AYE</u>	Mayor Austin:	<u>AYE</u>
Commissioner Taylor:	<u>AYE</u>		

WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.



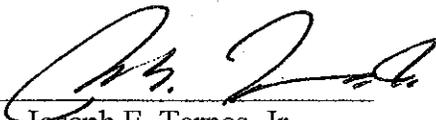
 Steve Austin, Mayor
 Date: May 24, 2011

ATTEST:



 Carolyn Williams, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS 6th DAY OF MAY, 2011.

By: 

 Joseph E. Ternes, Jr.
 City Attorney