

TITLE XI: BUSINESS REGULATIONS

Chapter

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§ 110.01 DEFINITIONS.

As used in this chapter, the following terms and their derivatives shall have the following meanings unless the context clearly indicates that a different meaning is intended.

BUSINESS. An enterprise, activity, profession or undertaking of any nature conducted for gain or profit. ***BUSINESS*** shall not include boards of trade, chambers of commerce, trade associations, unions or civic or fraternal organizations recognized by the Internal Revenue Service. ***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, where no part of the earnings, incomes or receipts of such unit, group or association inures to the benefit of any private shareholder or other person.

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.

CITY. The City of Lebanon, Kentucky.

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 are adjusted as follows:

(1) Include 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 Sections 401 (a), 401 (k), 402 (e), 403 (a), 403 (b), or 408, 414 (h) or 457 of the Internal Revenue Code; and

(2) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method that permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to, Sections 125 and 152 of the Internal Revenue Code.

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.

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 independent contractor under the Internal Revenue Code shall not be considered an employee.

EMPLOYER. The person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

(1) If the person for whom the individual performs or performed the service does not have control of the payment of wages for such services, the term **EMPLOYER** means the person having control of the payment of such wages; and

(2) In case of the 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.

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.

FISCAL YEAR. **FISCAL YEAR** as defined in Section 7701 (a)(24) of the Internal Revenue Code.

NET PROFIT. Gross income as defined in Section 61 of the Internal Revenue Code, minus all the deductions from the 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.

PERSON. Every natural person, whether a resident or nonresident of the city. Whenever the term **PERSON** is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to a corporation, shall mean the officers and directors thereof.

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.

SALES REVENUE. Receipts from the sale, lease, or rental of goods, services, or property.

TAX DISTRICT. Any county or city with the authority to levy net profits or occupational license taxes.

TAXABLE NET PROFIT.

(1) In case of a business entity having payroll or sales revenue only within the city, means “net profit” as defined herein.

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(2) In case of a business entity having payroll or sales revenue both within and without the city, means “net profit” as defined herein, and as apportioned under § 110.04.

TAXABLE YEAR. The calendar year or fiscal year ending during the calendar year upon the basis of which net income is computed.
(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.02 APPLICATION AND UPDATES REQUIRED.

(A) Every person or business entity engaged in any trade, occupation, profession, or other activity for profit, or anyone required to file a return under this chapter in the city, shall be required to complete and execute a questionnaire prescribed by the Occupational Tax Office.

(1) Each person shall be required to complete a separate questionnaire for each separate business before the commencement of business, or in the event of a status change other than change of address.

(2) Licensees are required to notify the Occupational Tax Office of changes of address, or the cessation of business activity, and of other changes that render inaccurate the information supplied in the completed questionnaire.

(B) Every person or business entity engaged in any trade, occupation or profession, or other activity for profit, or anyone required to file a return under this chapter in the city, shall be required to obtain a business license annually on January 1, or prior to the commencement of business operations within the city limits pursuant to § 110.14.

(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.03 OCCUPATIONAL LICENSE TAX PAYMENT REQUIRED.

(A) Except as provided in division (B) and division (E) of this section, every person or business entity engaged in any business for profit, and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet, shall be required to file and pay to the city an Occupational License Tax for the privilege of engaging in such activities within the city limits. The Occupational License Tax shall be measured by 1% of the following:

(1) All wages and 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;

(2) The net profit from business conducted in the city by a resident or nonresident business entity.

(B) All partnerships, S Corporations, and all other entities where income is “passed through” to the owners are subject to this chapter. The Occupational License Tax imposed in this chapter is assessed against income before it is “passed through” these entities to the owners.

(C) 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.

(D) 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 chapter on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.

(E) The Occupational License Tax imposed in this section shall not apply to the following persons or business entities:

(1) Any bank, trust company, combined bank and trust company, combined trust, banking and title business organized and doing business in this state, any savings and loan association, whether state or federally chartered.

(2) Any compensation received by members of the Kentucky National Guard for active duty training, unit training assembles and annual field training;

(3) Any compensation received by precinct workers for election training or work at election booths in state, county or city, and local primary, regular or special elections;

(4) 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. Licensees whose businesses are predominantly nonpublic service, who are also engaged in public service activity, are required to pay a license fee on their net profit derived from the nonpublic service activities apportioned to the city;

(5) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of manufacturing or trafficking in alcoholic beverages are required to file a return, but exclude the portion of their net profits derived from the manufacturing or trafficking in alcoholic beverages;

(6) Insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky, except as provided in KRS 91A.080;

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(7) Any profits, earnings, distributions of an investment fund that would qualify under KRS 154.20-250 to KRS 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor;

(8) Farmers' markets;

(9) Domestic servants employed in a private home; and

(10) Governmental entities and bona fide nonprofit organizations, but only to the extent of filing an annual return of net profits and from payment of an annual license fee, but such exemption shall not extend to the requirement of withholding and reporting license fees for employees of such governmental entities or nonprofit corporations.

(Ord. 85-4, passed 6-24-85; Am. Ord. 94-09, passed 6-14-94; Am. Ord. 07-17, passed 11-19-07)

§ 110.04 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; and

(3) For the purposes of divisions (A) through (D) of this section, the business entity shall file an apportionment form provided by the Occupational Tax Office.

(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 to the city, based on the time the individual's service is performed within the city limits;

(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 revenue 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, such as:

(1) Separate accounting;

(2) The exclusion of any one or more of the factors;

(3) The inclusion of one or more additional factors that 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.

(E) 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.

(1) The License Tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the city limits bears to the total wages and compensation paid or payable.

(2) In order for the city to verify the accuracy of a taxpayer's reported percentages under this division, the taxpayer shall maintain adequate records.

(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.05 EMPLOYERS TO WITHHOLD.

(A) Every employer making payment of compensation to an employee shall deduct and withhold, upon the payment of the compensation, any tax imposed against the compensation by the city. Amounts withheld shall be paid to the city in accordance with § 110.03.

(B) Every employer required to deduct and withhold tax under this section shall, for the quarter ending January 1, and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the city and pay to the city the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the city.

(C) Every employer who fails to withhold or pay to the city any sums required by this chapter to be withheld and paid 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.

(D) 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.

(1) If the employer withholds but fails to pay the amounts withheld were required to be paid to the city.

(2) If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the city.

(E) (1) Every employer required to deduct and withhold tax under this section shall annually, on or before February 28 of each year, complete and file, on a form furnished or approved by the city, a reconciliation of the Occupational License Tax withheld, where compensation is paid or payable to employees.

(2) 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.

(F) 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.

(G) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

(H) (1) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this chapter shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid to one or more employees of any 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 of any person; provided that the personal and individual liability shall apply to each or every person holding the corporate office at the time the tax becomes or became obligated.

(2) No person shall be personally and individually liable under this division who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due.

(I) Every employee receiving compensation in the city, subject to the tax imposed under § 110.03, shall be personally liable for the tax, notwithstanding the provisions of divisions (G) and (H) of this section.

(1) In all cases where the employer does not withhold the tax levied under this chapter 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.

(2) If an employer fails to or is not required to withhold, report or pay the license fee, it shall become the duty of the employee to file with the city.

(3) The only employer that is not required to withhold, report and pay the Occupational License Tax is the federal government, including the United States Postal Service.

(4) The payment required to be made by an employee can be made quarterly, for the periods ending March 31, June 30, September 30 and December 31 of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned.

(5) All license fees must be received by February 28 for the preceding calendar year, together with a copy of the employee's W-2 form.

(6) Employers not required to withhold, report or pay the license fee must annually, during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and Social Security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employees. This list shall include all current full-time employees, part-time employees, temporary employees and terminated employees, whether it be voluntary or involuntary.

(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.06 RETURNS REQUIRED.

(A) All business entity returns for the preceding taxable year shall be made by April 15 of each year, except returns made on the basis of a fiscal year, which shall be made by the 15th day of the fourth month following the close of the fiscal year. Blank forms for the return shall be supplied by the city.

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its Occupational License Tax return with the city.

(1) Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity in order 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 that have not been previously filed.

(2) The city may also require copies of reports of adjustments made by the federal government.

(C) (1) Every business entity subject to an Occupational License Tax governed by the provisions of this chapter shall keep records, render under oath statements, make returns, and comply with rules as the city from time to time may prescribe.

(2) Whenever it 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 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 prescribed for filing the Occupational License Tax return, determined without regard to any extension of time for filing the return.

(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.07 EXTENSIONS AND ESTIMATED PAYMENTS.

(A) The city may grant any business entity an extension of not more than six months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city, and the business entity, for filing its return, 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.

(B) If the time for filing a return is extended, the business entity 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 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.

(C) Every business entity, other than a sole proprietorship, subject to a net profits or Occupation License Tax levied by the city shall make quarterly estimated tax payments on or before the 15th day of the fourth, sixth, ninth and 12th month of each taxable year, if the tax liability for the taxable year exceeds \$5,000.

(D) The quarterly estimated tax payments required under division (C) of this section shall be based on the lesser of:

- (1) Twenty-two and one-half percent of the current taxable year tax liability;
- (2) Twenty-five percent of the preceding full year taxable year tax liability; or
- (3) Twenty-five percent of the average tax liability for the three preceding full taxable years' tax liabilities, if the tax liability for any of the three preceding full taxable years exceeded \$20,000.

(E) Any business entity that fails to submit the minimum quarterly payment required under division (D) of this section by the date for the quarterly payment shall pay an amount equal to 12% per annum simple interest on the amount of the quarterly payment required under division (D) of this section from the earlier of:

- (1) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under division (D) of this section; or
- (2) The due date of the annual return.

A fraction of a month is counted as an entire month.

(F) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the city, or any first taxable year in which business entity's tax liability exceeds \$5,000.

(G) At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.
(Ord. 07-17, passed 11-19-07)

§ 110.08 REFUNDS.

(A) Where there has been an overpayment of tax under § 110.05, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under § 110.05 by the employer.

(B) Unless written application for refund or credit is received by the city from the employer within two years from the date of overpayment was made, no refund or credit shall be allowed.

(C) An employee who has compensation attributable to activities performed outside the city, based on time spent outside the city, whose employer has withheld and remitted to the 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.

(1) The employee shall provide a schedule and computation sufficient to verify the refund claim.

(2) 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.

(D) In the case where the tax computed under this chapter is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund shall be made upon the filing of a return.

(E) (1) Overpayment resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year, or for any deficiency or nonpayment of tax for any previous taxable year;

(2) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this chapter.

(Ord. 07-17, passed 11-19-07)

§ 110.09 FEDERAL AUDIT PROVISIONS.

(A) As soon as practicable after each return is received, the city may examine and audit the 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 additional tax may be assessed at any time.

(2) In the case of a return where a business entity understates net profit or omits an amount properly included 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 division or six months from the date the city receives the final determination of the federal audit from the business entity, whichever is later. The times provided in this division may be extended by agreement between the business entity and the city.

(4) For the purposes of this division, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(5) 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;

(C) The city may initiate a civil action for the collection of any additional tax within the times prescribed in division (A) of this section.

(Ord. 07-17, passed 11-19-07)

§ 110.10 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 chapter may be refunded or credited within two 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 § 110.09 has been extended by an agreement between the business entity and the city, the limitation contained in this division 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 division, or six months from the conclusion of the federal audit, whichever is later.

For the purpose of this division and division (C) 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.

(Ord. 07-17, passed 11-19-07)

§ 110.11 INFORMATION TO REMAIN CONFIDENTIAL.

(A) No person 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.

(1) 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.

(2) Further, this prohibition does not preclude any employee of the city from testifying in any court, or from introducing as evidence returns or reports filed with the city, in an action for violation of the city tax laws or in any action challenging the city's laws.

(B) (1) 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.

(2) Provided, further, 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 in order to effect diligent enforcement of this chapter.

(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.12 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, 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.

The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less \$25.

(B) Every employer who fails to file a return or pay the tax on or before the date prescribed under § 110.03 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 shall not exceed 25% of the total tax due; however, the penalty shall not be less \$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.

(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) (1) The city may enforce the collection of the Occupational Tax due under § 110.03, and any fees, penalties and interest as provided in division s (A), (B), (C) and (D) of this section, by civil action in a court of appropriate jurisdiction.

(2) To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees it incurred in enforcing any provision of this chapter.

(F) In addition to the penalties prescribed in this section, any person, business entity or employer who willfully fails to make a return, willfully makes a false return, or 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 the preparation or presentation under, or in connection with, any matter arising under this chapter of a return, affidavit, claim or other document that is fraudulent or is false 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) For the purposes of this section, a **RETURN** 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 this chapter, 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 § 110.11 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 § 110.11 by divulging confidential taxpayer information shall be fined not more than \$1,000, or imprisoned for not more than one year, or both. (Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.13 USE OF OCCUPATIONAL LICENSE TAX.

All funds collected under any section of this chapter, unless otherwise specifically set forth in an order of a court having appropriate jurisdiction over the city during the pendency of litigation, shall be allocated to the General Fund.

(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

§ 110.14 ANNUAL BUSINESS LICENSE FEE IMPOSED.

(A) Every person conducting a business as defined in this chapter shall first obtain a license from the Administrator before the commencement of such business, the fee for which shall be \$25, except as provided in division (B) hereunder. Such fee shall be credited upon the payment of the annual license fee at the time of the annual filing, as provided elsewhere in this chapter.

(B) The legislative body of the city hereby finds that the following occupations and businesses are of such a nature as to require special regulation and supervision for the public good and safety, and therefore the following minimum license fees are imposed on every person, corporation, association, or other entity engaged in the enumerated businesses, occupations, callings or professions, or using, holding or exhibiting articles or things named in this section, and each such person, association, corporation or other entity shall pay in advance to the city for each calendar year or fiscal year, in accordance with the yearly basis used by the licensee in making a return under the terms of this chapter, the license fee as otherwise provided under this chapter. In the event a licensee engages in more than one type of activity within a single business entity, the highest minimum license fee shall apply.

(1) Agents, representatives or solicitors, not otherwise specifically licensed or specifically provided for, taking or soliciting orders or making sales: the fee of \$10 per day or \$100 yearly, payable before commencing the activity.

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(2) Auction house or lot: the fee of \$10 per day or \$100 yearly, payable before commencing the activity.

(3) Auctioneers, nor otherwise licensed: the fee of \$10 per day or \$100 yearly, payable before commencing the activity.

(4) Collection agencies: the fee of \$100 yearly, payable at the beginning of the year.

(5) Itinerant contractors, painters, plumbers, plasterers and like or similar occupations: the fee of \$10 yearly for each person engaged in the employment or occupation, payable at the beginning of the year or before commencing the activity.

(6) Pawnbrokers: the fee of \$100 yearly, payable at the beginning of the year.

(7) Peddlers and itinerant merchants of any kind of merchandise from any car, truck, lot or premises: the fee of \$35 per day or \$100 per year, payable before commencing the activity.

(8) Pool room, billiards parlor or game room: the fee of \$100 per year, payable at the beginning of the year.

(9) Trucks, truck-trailers, semi-trailers, trailers, automobiles, wagons or drays used for the purpose of hauling, transporting, loading or unloading any freight, livestock, furniture, machinery, junk, fruit, vegetables, groceries, fixtures, produce, appliances, equipment or any other merchandise: the fee of \$5 per day or \$30 per year for each such vehicle, payable before commencing the activity. No license shall be required for any truck or vehicle which is either:

(a) Exempted by the Kentucky Revised Statutes from the payment of city license taxes;

or

(b) Operated by any farmer exclusively for the transportation of the products of his/her farm or land; or

(c) Used exclusively by any person, firm or corporation otherwise licensed by the city to engage in a business or occupation when used by such person, firm or corporation to call on or make deliveries to its customers.

(C) (1) It shall be the duty of the Administrator to collect, and of the Treasurer to receive, the license fees imposed by this chapter.

(2) The Administrator shall keep records showing the amount received by him or her from each licensee and employer, and the date of such receipt, but such records shall be subject to the safeguards provided in § 110.11.

(Ord. 85-4, passed 6-24-85; Am. Ord. 07-17, passed 11-19-07)

CHAPTER 111: PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS

Section

- 111.01 Definitions
- 111.02 License requirement
- 111.03 Application procedure
- 111.04 Standards for issuance
- 111.05 Revocation procedure
- 111.06 Standards for revocation
- 111.07 Appeal procedure
- 111.08 Exhibition of identification
- 111.09 Sale of food from motor vehicles
- 111.10 Standards for on-street solicitation

- 111.99 Penalty

Cross-reference:

Minimum license fees required of certain businesses, see § 110.09

§ 111.01 DEFINITIONS.

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

BUSINESS. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

GOODS. Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

ITINERANT MERCHANT. Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the city.

PEDDLER.

(1) Any person who travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Any person who, without traveling from place to place, sells or offers goods for sale from any public place within the city.

A person who is a peddler is not an itinerant merchant.

SOLICITOR. Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

§ 111.02 LICENSE REQUIREMENT.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the city.

(B) The fee for the license required by this chapter shall be as set forth in § 110.09.

(C) No license issued under this chapter shall be transferable.

(D) All licenses issued under this chapter shall expire 90 days after the date of issuance thereof. Penalty, see § 111.99

§ 111.03 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this chapter shall file an application with the City Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

(1) The name and address of the applicant;

(2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the city;

(b) The local address of such individual;

(c) The permanent address of such individual;

(d) The capacity in which such individual will act;

(3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;

(4) The time period or periods during which it is proposed to carry on applicant's business;

(5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;

(b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;

(c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;

(6) The nature of the advertising proposed to be done for the business;

(7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:

(1) A description of the applicant;

(2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

(C) All applicants for licenses required by this chapter shall attach to their application the following:

(1) If required by the city, copies of all printed advertising proposed to be used in connection with the applicant's business;

(2) If required by the city, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

Penalty, see § 111.99

§ 111.04 STANDARDS FOR ISSUANCE.

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence of any the following will constitute valid reasons for disapproval of an application:

- (1) Has been convicted of a crime of moral turpitude; or
- (2) Has made willful misstatements in the application; or
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like; or
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts; or
- (6) Has an unsatisfactory moral character.

§ 111.05 REVOCATION PROCEDURE.

Any license or permit granted under this chapter may be revoked by the City Clerk after notice and hearing, pursuant to the standards in § 111.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten days prior to the date set for the hearing.

§ 111.06 STANDARDS FOR REVOCATION.

A license granted under this chapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application; or
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or
- (C) Any violation of this chapter; or
- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

§ 111.07 APPEAL PROCEDURE.

(A) Any person aggrieved by a decision under §§ 111.04 or 111.06 shall have the right to appeal to the legislative body. The appeal shall be taken by filing with the legislative body, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The legislative body shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 111.05.

(B) The order of the legislative body after the hearing shall be final.

§ 111.08 EXHIBITION OF IDENTIFICATION.

(A) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the city shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) The City Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

Penalty, see § 111.99

§ 111.09 SALE OF FOOD FROM MOTOR VEHICLES.

(A) No individual, firm, corporation or association shall sell foodstuffs or other merchandise from motor vehicles, carriages, wagons or carts which are parked on any street or public thoroughfare in the city.

(B) Nothing herein contained shall prevent or prohibit the sale of foodstuffs or other merchandise by vendors thereof who peddle their products from house to house in the residential sections of the city. (Ord. 420.1, passed 8-3-48) Penalty, see § 111.99

§ 111.10 STANDARDS FOR ON-STREET SOLICITATION.

(A) Except as otherwise provided, no person shall stand on a highway or street for the purpose of soliciting contributions from the occupant of any vehicle except when the person is doing so pursuant to a solicitation permit issued to a soliciting agency that complies with the conditions as set forth below.

(B) The City Administrator or his or her designee shall issue a solicitation permit to a soliciting agency that meets all of the following requirements:

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(1) The agency must be qualified and approved by the Internal Revenue Service as a non-profit tax exempt organization under Internal Revenue Code, Section 501, and must at the time of its application provide to the city a copy of said exemption. Such agency shall, in addition to meeting the Internal Revenue Code, Section 501 requirement, also be either a charitable agency or an agency which is community based and providing a benefit to the entire community, such as the Crusade for Children, Toys for Kids, Marion County Project Graduation, Relay for Life, Knights of Columbus, St. Jude's or Lions Club, which specifically named organizations are exempt from the Section 501 requirement.

(2) The agency shall be liable for any injuries to any person or property during the solicitation which is casually related to an act of ordinary negligence of the agency or its agent, and the agency must file with the city, with its application for a solicitation permit, a certificate of insurance (or as an alternative, an insurance certificate evidencing an umbrella policy for its parent organization and containing at least equal provisions protecting the city) showing liability insurance in the minimum amount of \$300,000 for personal injury per occurrence and \$100,000 for property damage during the period of requested solicitation, and the city shall be named as an additional insured on the certificate.

(3) All applications for a solicitation permit shall be filed with the city in writing at least 30 days in advance. No more than ten roadblock permits shall be issued by the city in any calendar year.

(C) The soliciting agency shall be subject to the following conditions:

(1) Any person engaged in solicitation on behalf of the soliciting agency shall be at least 16 years of age and shall at all times wear a high visibility vest provided by the city.

(2) Traffic cones shall be placed along the street lane(s) where the soliciting person or persons stand.

(3) Should any persons engaged in solicitation be under the age of 18, an adult sponsor must be present at all times to supervise such persons.

(4) No more than one solicitation permit shall be issued by the city to a soliciting agency for each calendar year. The permit shall be good for no more than two days and the two days shall be consecutive days.

(5) Soliciting pursuant to a permit shall take place only at intersections in travel lanes where the traffic has come to a complete stop. Solicitation may take place only at the intersections of Spalding and Main and Walnut and Main.

(6) Each solicitor shall wear an identification card which clearly displays the name of the soliciting agency. Signage in all directions shall be displayed in four inch letters showing the name of the agency and the purpose which the solicitation is for.

(7) No more than one soliciting agency shall be authorized to solicit at a particular intersection.

(8) Solicitation shall take place during daylight hours only, for no more than eight consecutive hours, shall conclude at least one-half hour before dark, and shall take place only on a Saturday, Sunday or both.

(9) The soliciting agency shall be required to file an application for a solicitation permit on a form provided by the city and apply for any other permits that may be required by any applicable law or ordinance.

(D) No person shall stand on a highway or street, or on any street or highway, or highway right-of-way, for the purpose of handing out pamphlets and/or distributing literature to the occupant of any vehicle, unless such pamphlets or literature is directly connected to a solicitation for which a solicitation permit has been issued.
(Ord. 04-02, passed 5-10-04)

§ 111.99 PENALTY.

(A) Whoever violates any provision of this chapter shall be guilty of a misdemeanor and shall be fined not more than \$500. Each day's violation shall constitute a separate offense.

(B) Any person, firm or corporation violating any of the provisions hereof shall be deemed guilty of a punishable violation, and upon conviction thereof shall be fined in an amount not exceeding \$250 or be imprisoned for a period not exceeding 90 days, or both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense.
(Am. Ord. 04-02, passed 5-10-04)

CHAPTER 112: PAWNBROKERS

Section

- 112.01 Definitions
- 112.02 Bond
- 112.03 Register to be kept; daily reports
- 112.04 Receipt to be given for each article; sale of article
- 112.05 Maximum interest, resale price
- 112.06 Receipt to be given for payment of loan
- 112.07 Prohibited activities
- 112.08 Enforcement

- 112.99 Penalty

§ 112.01 DEFINITIONS.

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

PAWNBROKER. Any person who loans money on deposit of personal property; deals in the purchase of personal property on condition of selling the property back again at a stipulated price; makes a public display at his place of business of the sign generally used by pawnbrokers to denote their business; or who publicly exhibits a sign advertising money to loan on personal property or deposit.

(KRS 226.010)

§ 112.02 BOND.

Every person to whom a city license is granted to carry on the business of a pawnbroker shall annually enter into bond to the city, with good and sufficient surety to be approved by City Council, in the penal sum of \$1000. This bond shall be conditioned that he will observe the provisions of this chapter and all ordinances and laws in force in the city not inconsistent with this chapter.

(KRS 226.020)

§ 112.03 REGISTER TO BE KEPT; DAILY REPORTS.

(A) Every pawnbroker shall keep a register of all loans and purchases of all articles by the pawnbroker from the general public. The register shall:

(1) Be reported to an online, Internet-based transaction recording service accessible to law enforcement agencies;

(2) Show the dates and the amounts of all loans or purchases by the pawnbroker from the general public, and the names and:

(a) A driver's license number;

(b) Another state or federally issued picture identification card number; or

(c) If the identification specified in division (A)(2)(a) or (b) is not available, a Social Security number may be accepted;

of all persons who have left any property that has been pawned or sold;

(3) At all times be available to the inspection of any law enforcement officer of this state when in the discharge of his or her official duty; and

(4) Contain a full description of all property purchased by the pawnbroker from the general public or received on deposit as collateral or security. When requested by law enforcement and pertaining to an investigation, a photograph of the merchandise shall be made available to law enforcement if the property is still in the possession of the pawnbroker. For purposes of this paragraph, **FULL DESCRIPTION** includes but is not limited to:

(a) Make;

(b) Model;

(c) Color;

(d) Size;

(e) Manufacturer;

(f) Vintage; and

(g) Distinguishing marks or characteristics.

(B) When secondhand merchandise is sold to a pawnbroker, the merchandise shall be held for a minimum of 12 days before being resold.

(C) Prior to the release of property to a representative of law enforcement, the law enforcement representative shall provide to the pawnbroker a case report or other documentation that the item has been reported as stolen.

(KRS 226.040)

(D) Every pawnbroker shall, by 11:00 a.m. each day, make available to the Chief of Police a true and correct written report of all goods received by him or her, whether by pawn or purchase, during the 24 hours preceding each report. The report shall describe the goods as accurately as practicable. The Chief of Police shall furnish blanks for these reports.

(KRS 226.070) Penalty, see § 112.99

§ 112.04 RECEIPT TO BE GIVEN FOR EACH ARTICLE; SALE OF ARTICLE.

(A) Every pawnbroker shall give a plain written or printed ticket for the loan to the person negotiating or selling, and a plain written or printed receipt of the articles that have been purchased or upon which money is loaned, having on each a copy of the entries required by § 112.03(A) to be kept in his register. He shall not make any charge for the ticket or receipt.

(B) A pawnbroker may sell any article pawned after the expiration of 60 days from the maturity of the loan. However, not less than ten days before making the sale, the pawnbroker shall give notice to the person by whom the article was pawned by mail addressed to the post office address of that person as shown on the pawnbroker's register, notifying such person that, unless he redeems the article within ten days from the date of mailing of the notice, the article will be sold.

(KRS 226.050) Penalty, see § 112.99

§ 112.05 MAXIMUM INTEREST, RESALE PRICE.

Any pawnbroker as defined in § 112.01, may, in loaning money on deposit of personal property, charge, contract for, or receive interest at a rate not exceeding 2% per month on the unpaid principal balance of the loan, and may charge, contract for, and receive a reasonable fee, not to exceed one-fifth of the value of the loan per month, for investigating the title, storing and insuring the property, closing the loan, making daily reports to local law enforcement officers if required by § 112.03, and for other expenses, losses, and incidental costs associated with servicing such loans. Further, this fee, when made and collected, shall not be deemed as interest for any purpose of law. No pawnbroker shall directly or indirectly charge, receive, or contract for any interest or consideration greater than that allowed by this section.

(KRS 226.080) Penalty, see § 112.99

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§ 112.06 RECEIPT TO BE GIVEN FOR PAYMENT OF LOAN.

Every pawnbroker, upon receiving any payment of money from a borrower, shall give to that person a plain and complete receipt for such payment, specifying separately the amount applied to principal and the amount applied to interest. In a case where the pawnbroker has purchased personal property under an agreement to sell it back at a stipulated price, the pawnbroker shall, on receiving any payment of money from the person from whom the purchased, give that person a receipt stating the original purchase price, the stipulated resale price, and the amount received.
(KRS 226.090) Penalty, see § 112.99

§ 112.07 PROHIBITED ACTIVITIES.

No pawnbroker shall receive, by way of either pledge or pawn, any article whatever from a minor at any time nor from any person between 8:00 p.m. and 7:00 a.m.
(KRS 226.030) Penalty, see § 112.99

§ 112.08 ENFORCEMENT.

The Police Department shall enforce the provisions of this chapter unless otherwise provided by KRS 226.100. However, county police, for the purpose of locating stolen goods, may carry out the provisions of KRS 226.060 within the city.
(KRS 226.100)

§ 112.99 PENALTY.

(A) Any pawnbroker or pawnbroker's clerk who violates any of the provisions of this chapter for which no penalty is otherwise provided shall, upon conviction, be guilty of a misdemeanor and shall be fined not less than \$50 nor more than \$500, and his license may be forfeited to the city. (KRS 226.990(1))

(B) Any pawnbroker who violates any of the provisions of § 112.03(B) shall be guilty of a misdemeanor and shall be fined not less than \$20 nor more than \$100. (KRS 226.990(3))

CHAPTER 113: INSURANCE COMPANIES

Section

- 113.01 Imposition of license fee
- 113.02 Amount of fee for companies issuing life insurance
- 113.03 Amount of fee for companies issuing policies other than life insurance
- 113.04 Due date; interest
- 113.05 Written breakdown of collections
- 113.06 Minimum fee

§ 113.01 IMPOSITION OF LICENSE FEE.

There is hereby imposed on each insurance company a license fee for the privilege of engaging in the business of insurance within the corporate limits of the city, on a calendar-year basis.
(Ord. 84-12, passed 10-24-84)

§ 113.02 AMOUNT OF FEE FOR COMPANIES ISSUING LIFE INSURANCE.

The license fee imposed upon each insurance company which issues life insurance policies on the lives of persons residing within the corporate limits of the city shall be 10% of the first year's premiums actually collected within each calendar quarter by reason of the issuance of such policies.
(KRS 91A.080(2)) (Ord. 84-12, passed 10-24-84; Am. Ord. 88-1, passed 3-8-88; Am. Ord. 90-1, passed 4-9-90)

§ 113.03 AMOUNT OF FEE FOR COMPANIES ISSUING POLICIES OTHER THAN LIFE INSURANCE.

The license fee imposed upon each insurance company which issues any insurance policy which is not a life insurance policy shall be 10% of the premiums actually collected within each calendar quarter by reason of the issuance of such policies on risks located within the corporate limits of the city on those classes of business which such company is authorized to transact, less all premiums returned to policyholders; however, any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or death caused thereby, under the provisions of the Workers' Compensation Act and shall not include

premiums received on policies of group health insurance provided for state employees under KRS 18A.225(2), or premiums received by any state employee benefit fund created pursuant to KRS Chapter 18A for the purpose of providing health benefits to state employees.
(KRS 91A.080(3), (10)) (Ord. 84-12, passed 10-24-84; Am. Ord. 88-1, passed 3-8-88; Am. Ord. 89-12, passed 8-7-89; Am. Ord. 90-1, passed 4-9-90)

§ 113.04 DUE DATE; INTEREST.

All license fees imposed by this chapter shall be due no later than 30 days after the end of each calendar quarter. License fees which are not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6).
(KRS 91A.080(8), (9)) (Ord. 84-12, passed 10-24-84)

§ 113.05 WRITTEN BREAKDOWN OF COLLECTIONS.

Every insurance company subject to the license fees imposed by this chapter shall annually, by March 31, furnish the city a written breakdown of all collections in the preceding calendar year for the following categories of insurance:

- (A) Casualty.
- (B) Automobile.
- (C) Inland marine.
- (D) Fire and allied perils.
- (E) Health.
- (F) Life.

(KRS 91A.080(8)) (Ord. 84-12, passed 10-24-84)

§ 113.06 MINIMUM FEE.

The minimum license fee imposed hereunder shall be \$10 per year.
(Ord. 84-12, passed 10-24-84)

CHAPTER 114: FLEA MARKETS AND YARD SALES

Section

- 114.01 Definitions
- 114.02 Regulation of flea markets
- 114.03 Regulation of yard sales

- 114.99 Penalty

§ 114.01 DEFINITIONS.

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

FLEA MARKET. The outdoor display and sale of personal property, including, but not limited to, antiques and semi-antiques, collectibles, junk, weapons, clothing, and new and used goods and items, generally acquired for purposes of resale and not initially acquire for the personal use of the seller and/or the seller's family.

YARD SALE. The outdoor display and sale and the display and sale within a garage, tent, carport or other similar structure of the above-referenced items of personalty which were generally initially acquired for the personal use of the seller and/or the seller's family.
(Ord. 92-4, passed 5-11-92)

§ 114.02 REGULATION OF FLEA MARKETS.

It shall be unlawful to conduct, sell at, or participate in a flea market at any time within the city, other than those properly licensed and approved flea markets conducted during the Country Ham Days Festival.

(Ord. 92-4, passed 5-11-92) Penalty, see § 114.99

Cross-reference:

Marion County Country Ham Days Festival, see §§ 117.15, 117.16

§ 114.03 REGULATION OF YARD SALES.

It shall be unlawful to conduct, sell at, or participate in, other than as a purchaser or prospective purchaser, at any yard sale within the city during all or any part of more than six days during any calendar year.

(Ord. 92-4, passed 5-11-92) Penalty, see § 114.99

§ 114.99 PENALTY.

(A) Any person, firm or corporation violating any of the provisions of § 114.02 or failing or refusing to comply with same shall be guilty of a violation and shall be fined not less than \$25 nor more than \$100 for each offense and each day a violation hereof exists shall constitute a separate offense.

(B) Any person, firm or corporation violating any of the provisions of § 114.03 or failing or refusing to comply with same shall be guilty of a violation and shall be fined not less than \$25 nor more than \$50 for each offense and each day a violation hereof exists shall constitute a separate offense.

(Ord. 92-4, passed 5-11-92)

CHAPTER 115: PRECIOUS METALS

Section

- 115.01 Dealers to keep daily register
- 115.02 Copy of register to be furnished to Chief of Police
- 115.03 Articles to be kept separate; examination by Police Department
- 115.04 Photograph of seller required
- 115.05 Transactions with minors prohibited
- 115.06 Exemptions

- 115.99 Penalty

§ 115.01 DEALERS TO KEEP DAILY REGISTER.

It shall be the duty of all persons dealing in the purchase or exchange of second-hand or antique jewelry, coins, watches, diamonds or other precious stones, cutlery, old gold, silver, platinum, or other precious metals, or any other second-hand manufactured articles, composed wholly or in part of gold, silver, platinum or other precious metals to keep a daily register on a form provided by the Lebanon Police Department, of every article purchased or exchanged by them in the course of their business and the persons from whom such articles were acquired. Said register shall contain as minute a description of each article as is possible, including any identification numbers and the manufacturer's name, as well as the name, age, sex, race, address, driver's license number, general description of the individual or individuals selling or exchanging the articles, and their signatures.
(Ord. 81-3, passed 2-9-81) Penalty, see § 115.99

§ 115.02 COPY OF REGISTER TO BE FURNISHED TO CHIEF OF POLICE.

All persons engaged in business as described in § 115.01 above, shall furnish to the Chief of Police each day at the Police office by 11:00 a.m., a copy of the register for all transactions which took place during the preceding day.
(Ord. 81-3, passed 2-9-81) Penalty, see § 115.99

§ 115.03 ARTICLES TO BE KEPT SEPARATE; EXAMINATION BY POLICE DEPARTMENT.

All persons engaged in business as described in § 115.01 above, shall retain each and every article received by them in the same state or condition in which it was received, and all articles received during any one day's transaction shall be kept separately and shall not be co-mingled with articles received during any other day's transactions. Furthermore, all articles shall be made available for examination within the city to members of the Police Department, and the Sheriff's Department, State Police, or other law enforcement officials for a period of five consecutive days after their receipt, before such articles are resold, exchanged or removed from the city, unless written permission is obtained from the Chief of Police.

(Ord. 81-3, passed 2-9-81) Penalty, see § 115.99

§ 115.04 PHOTOGRAPH OF SELLER REQUIRED.

No person engaged in business as described in § 115.01 above shall purchase or exchange second-hand or antique jewelry, coins, watches, diamonds or other precious stones, cutlery or old gold, silver, platinum or other precious metals, or other second-hand manufactured articles composed wholly or in part of gold, silver, platinum, or other precious metals unless the person first obtains an instant developing photograph of the seller or exchanger of the above enumerated items. The photograph is to be identified in such a way that the person or persons shown in the photograph can be identified with each entry of the register identified in § 115.01. The photograph and register shall be maintained for a period of one year after the date on which the transaction occurred.

(Ord. 81-3, passed 2-9-81) Penalty, see § 115.99

§ 115.05 TRANSACTIONS WITH MINORS PROHIBITED.

No person engaged in business as described in § 115.01 above, shall purchase or exchange second-hand or antique jewelry, coins, watches, diamonds or other precious stones, cutlery, or old gold, silver, platinum or other precious metals, or any other second hand manufactured articles composed wholly or in part of gold, silver, platinum or other precious metals from any person less than 18 years of age.

(Ord. 81-3, passed 2-9-81) Penalty, see § 115.99

§ 115.06 EXEMPTIONS.

Nothing contained herein shall require compliance of §§ 115.01 through 115.05 by a person engaging in business within the city who possesses a current business license for the operation of such a business from the city and is:

(A) Accepting returns for cash, credit, or replacement of any item originally purchased from said person;

(B) Exchanging an item for another item of greater value.
(Ord. 81-3, passed 2-9-81)

§ 115.99 PENALTY.

Violation of any of the duties, requirements, or prohibitions contained in this chapter shall be punishable as a Class A Misdemeanor as defined by the Kentucky Revised Statutes, subject to a fine of up to \$500 and imprisonment for up to 12 months.
(Ord. 81-3, passed 2-9-81)

CHAPTER 116: ALCOHOLIC BEVERAGES

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LICENSING**§ 116.01 DEFINITIONS.**

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

ALCOHOL. Ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.

ALCOHOLIC BEVERAGE. Every liquid or solid, whether patented or not, containing alcohol in an amount in excess of more than 1% of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:

- (1) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
- (2) Patented, patent, and proprietary medicines;
- (3) Toilet, medicinal, and antiseptic preparations and solutions;
- (4) Flavoring extracts and syrups;
- (5) Denatured alcohol or denatured rum;
- (6) Vinegar and preserved sweet cider;
- (7) Wine for sacramental purposes; and
- (8) Alcohol unfit for beverage purposes that is to be sold for legitimate external use.

ALCOHOL VAPORIZING DEVICE or **AWOL DEVICE.** Any device, machine, or process that mixes liquor, spirits, or any other alcohol product with pure oxygen or by any other means produces a vaporized alcoholic product used for human consumption. **ALCOHOL VAPORIZING DEVICE** or **AWOL DEVICE** does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage.

BOTTLE. Any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.

BREWER. Any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either alone or through an agent.

BREWERY. Any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept.

BUILDING CONTAINING LICENSED PREMISES. The licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership.

CATERER. A corporation, partnership, or individual that operates the business of a food service professional by preparing food in a licensed and inspected commissary, transporting the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guest.

CHARITABLE ORGANIZATION. A nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) or any organization having been established and continuously operating within the commonwealth for charitable purposes for three years and which expends at least 60% of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes.

CIDER. Any fermented fruit-based beverage containing more than 0.1% alcohol by volume and includes hard cider and perry cider.

CITY ADMINISTRATOR. As used in this chapter, the term shall mean city alcoholic beverage control administrator.

CONVENTION CENTER. Any facility which, in its usual and customary business, provides seating for a minimum of 1,000 people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions.

CONVICTED and CONVICTION. A finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment.

DISTILLED SPIRITS or SPIRITS. Any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages.

DISTILLER. Any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky.

DISTILLERY. Any place or premises where distilled spirits are manufactured for sale and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse.

DISTRIBUTOR. Any person who distributes malt beverages for the purpose of being sold at retail.

HOTEL. A hotel, motel, or inn for accommodation of the traveling public, designed primarily to serve transient patrons.

LICENSE. Any license issued pursuant to KRS Chapters 241 to 244.

LICENSEE. Any person to whom a license has been issued, pursuant to KRS Chapters 241 to 244.

LIMITED RESTAURANT.

(1) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least 70% of its gross income from the sale of food, which maintains a minimum seating capacity of 100 persons for dining, and which is located in a wet or moist territory under KRS 242.1244(2); or

(2) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least 70% of its gross income from the sale of food, which maintains a minimum seating capacity of 50 persons for dining, which has no open bar, which requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a wet or moist territory under KRS 242.1244.

MALT BEVERAGE. Any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt.

MANUFACTURE. Distill, rectify, brew, bottle, and operate a winery.

MANUFACTURER. A winery, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages.

MINOR. Any person who is not 21 years of age or older.

PREMISES. The land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. ***PREMISES*** shall not include as a single unit two or more separate businesses of one owner on the same lot or tract of land, in the same or in different buildings, if physical

and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exists equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998, shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal of the license.

PRIVATE CLUB. A nonprofit social, fraternal, military, or political organization, club, or entity maintaining or operating a club room, club rooms, or premises from which the general public is excluded.

PUBLIC NUISANCE. A condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons.

QUALIFIED HISTORIC SITE. A contributing property with dining facilities for at least 50 persons at tables, booths, or bars where food may be served within a commercial district listed in the National Register of Historic Places, or a site that is listed as a National Historic Landmark or in the National Register of Historic Places with dining facilities for at least 50 persons at tables, booths, or bars where food may be served. Notwithstanding the provisions of this subsection: (a) A distillery which is listed as a National Historic Landmark and which conducts souvenir retail package sales under KRS 243.0305; and (b) A not-for-profit or nonprofit facility listed on the National Register of Historic Places shall be deemed a “qualified historic site” under this section.

RECTIFIER. Any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name.

REPACKAGING. The placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.

RESTAURANT. A facility where the usual and customary business is the serving of meals to consumers that has a bona fide kitchen facility and that receives at least 50% of its food and beverage receipts from the sale of food.

RETAIL CONTAINER. Any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not.

RETAIL OUTLET. Retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers.

RETAIL SALE. Any sale where delivery is made in the state to any consumers.

RETAILER. Any person who sells at retail any alcoholic beverage for the sale of which a license is required.

SALE. Any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage.

SELL. Includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.

SERVICE BAR. A bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guest, or patrons are prohibited.

SMALL FARM WINERY. A winery producing wines in an amount not to exceed 50,000 gallons in a calendar year.

SOUVENIR PACKAGE. A special package of Kentucky straight bourbon whiskey available for retail sale at a licensed state distillery where the whiskey was produced or bottled that is available from a licensed retailer.

SUPPLEMENTAL BAR. A bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar. A supplemental bar shall be continuously constructed and accessible to patrons for distilled spirits or wine sales or service without physical separation by walls, doors, or similar structures.

TERRITORY. A county, city, district, or precinct.

VEHICLE. Any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages.

WAREHOUSE. Any place in which alcoholic beverages are housed or stored.

WHOLESALE SALE. A sale to any person for the purpose of resale.

WHOLESALER. Any person who distributes alcoholic beverages for the purpose of being sold at retail, but the term shall not include a subsidiary of a manufacturer or cooperative of a retail outlet.

WINE. The product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed 24% by volume. It includes cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than 15% of alcohol by volume. It includes ciders, perry, or sake.

WINERY. Any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded, except a place or premises that manufactures wine for sacramental purposes exclusively.

(Ord. 88-11, passed 8-8-88; Am. Ord. 2013-09, passed 12-12-13)

§ 116.02 LICENSE REQUIRED.

It shall be unlawful to sell or offer for sale at wholesale or at retail in the city any alcoholic beverage without having the appropriate wholesale or retail license hereinafter provided for, or in violation of the terms of such license. Each license issued shall be applicable only to the specific premises shown thereon and shall not entitle the holder of the license to sell from any other premises within the city.

(Ord. 88-11, passed 8-8-88; Am. Ord. 2013-09, passed 12-12-13) Penalty, see § 116.99

§ 116.03 APPLICATION FOR LICENSE.

(A) Applications for licenses shall be made to the City Administrator, in writing, signed by the applicant, if an individual, or by a duly authorized agent thereof, if a corporation. Such applications shall be made on forms supplied by the City Administrator, and no license shall be issued until completed in full and the appropriate fee therefor has been paid.

(B) All applicants, all officers of any applicant corporation, all persons holding 5% or more of the stock in an applicant corporation, or owners or partners of an applicant partnership shall each submit fingerprints and a current color photograph of themselves with all other documents as required in the application process or during any subsequent renewal if not previously provided, or otherwise deemed necessary by the City Administrator.

(C) Any qualified applicant may submit the appropriate application for any one or more of the licenses for alcoholic beverage industry which the Department of Alcoholic Beverage Control has deemed available within the city limits. All such licenses are defined in KRS Chapter 243.0305 through KRS 243.355, and the city hereby adopts the classification system utilized in those statutes for use within the city limits as well.

(Ord. 88-11, passed 8-8-88; Am. Ord. 97-06, passed 11-10-97; Am. Ord. 2013-09, passed 12-12-13)

§ 116.04 LICENSE FEES.

(A) The licenses authorized under this subchapter shall be divided into the following categories, and the applicant shall at the time of his or her application pay to the City Administrator the appropriate fee for each license applied for:

(1) Distilled spirit licenses as set forth in KRS 243.030:

(a)..... Distiller’s license, per annum:
\$500

(b) Rectifier’s license, per annum:

1. Class A..... \$3,000 or;

2. Class B\$825

(c)..... Wholesaler’s distilled spirit and wine license, per annum:
\$3,000

(d)..... Quota retail package license, per annum:
\$550

(e)..... Quota retail drink license, per annum:
\$500

(f)..... Special temporary license, per event:
\$105

(g) Nonquota type 1 retail drink license (includes distilled spirits, wine, and malt beverages), per annum:\$2,000

(h) Nonquota type 2 retail drink license (includes distilled spirits, wine, and malt beverages), per annum:\$498

(i) Nonquota type 3 retail drink license (includes distilled spirits, wine, and malt beverages), per annum:\$300

(j) Distilled spirits and wine special temporary auction license, per event:\$200

(k)..... Special Sunday retail drink license, per annum:
\$0

(l)..... Extended hours supplemental license, per annum:
\$2,000

(m)..... Caterer’s license, per annum:
\$200

(n)..... Bottling house or bottling house storage license, per annum:
\$1,000

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(2) Malt beverage licenses as set forth in KRS 243.040, follows:

(a).....Brewer’s license, per annum:
\$500

(b)..... Microbrewery license, per annum:
\$500

(c).....Malt beverage distributor’s license, per annum:
\$400

(d).....Nonquota retail malt beverage package license, per annum:
\$105

(e) Nonquota type 4 retail malt beverage drink license, per annum:\$78

(f)..... Malt beverage brew-on-premises license, per annum:
\$100

(3) Limited restaurant license (includes distilled spirits, wine, and malt beverages), per annum:\$1,200

(4) Limited golf course license (includes distilled spirits, wine, and malt beverages), per annum:\$500

(5) The fee for each of the first five supplemental bar licenses shall be the same as the fee for the primary drink license. There shall be no charge for each supplemental license issued in excess of five to the same licensee at the same premises.

(6) The holder of a nonquota retail malt beverage package license may obtain a nonquota type 4 malt beverage drink license for a fee of \$50. The holder of a nonquota type 4 malt beverage drink license may obtain a nonquota retail malt beverage package license for a fee of \$50.

(B) Persons desiring to obtain a license hereunder for only part of a license year shall pay a prorated fee equal to as many twelfths of the annual license fee as there are calendar months remaining in the license year, including the month in which the license is granted. In no event shall the prorated license fee be less than one-half the full annual license fee.

(C) The license year shall be a 12-month period commencing with the first day of the month for renewal of county licenses according to the revised renewal schedule promulgated by the state Alcoholic Beverage Control Board.

(Ord. 88-11, passed 8-8-88; Am. Ord. 98-04, passed 10-12-98; Am. Ord. 09-01, passed 1-2-09; Am. Ord. 2013-09, passed 12-12-13; Am. Ord. 2017-02, passed 4-28-17)

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§ 116.05 REASONS FOR DENIAL OF LICENSE.

No license provided for in this chapter shall be issued to:

(A) A person who has been convicted of a felony, except if the person has had his or her civil rights restored by the authority of the governor of the state in which the adjudication was made.

(B) A person whose license under this section has been revoked for any cause.

(C) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

(D) A partnership, unless all the members of the partnership shall be qualified to obtain such a license.

(E) A corporation, if any officer, manager, or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation would not be eligible to receive a license hereunder for any such reason.

(F) A person whose place of business is to be conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.

(G) A person who has, within five years of the application date, been convicted of a violation of any federal or state law concerning the manufacture, possession, transportation, or sale of alcoholic beverages, or who shall have forfeited his or her bond to appear in court to answer charges for any such violation.

(H) Any person, firm, or corporation not eligible for a state alcoholic beverage license regulating the sale of the same alcoholic beverages for which such person proposes to acquire a city license.
(Ord. 88-11, passed 8-8-88; Am. Ord. 97-06, passed 11-10-97; Am. Ord. 2013-09, passed 12-12-13)

§ 116.06 HOURS SALES PROHIBITED.

(A) Unless otherwise permitted under this subsection, no premises for which there has been granted any license for the sale of distilled spirits, wine, or malt beverages shall remain open for any purpose between 1:00 a.m. and 6:00 a.m. Monday through Saturday, or between the hours of 1:00 a.m. and 12:00 p.m. noon on Sunday, provided that if a licensee provides a separate department within the

licensed premises capable of being locked and closed off, within which is kept all stocks of distilled spirits, wine, and malt beverages, and all fixtures and apparatus connected with the alcohol business, and said department is kept locked during times mentioned above, the licensee shall be deemed to have complied with this section.

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(B) Pursuant to KRS 244.290 and 244.480, a licensed premises receiving a minimum of 50% of its income from the sale of food and meeting the requirements of KRS 243.084 shall be eligible to receive a Sunday retail drink license. Likewise, private clubs meeting the requirements below shall be eligible to receive a Sunday retail drink license. The retail drink license shall permit the sale of alcoholic beverages by the drink, including wine, distilled spirits, or malt beverages. The hours of operation for a facility holding a Sunday retail drink license shall be the hours of 12:00 p.m. to 10:00 p.m. on Sundays. This division shall not apply to package liquor stores and does not exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the commonwealth.

(C) Pursuant to KRS § 244.290 and KRS § 244.480, years in which December 31 (New Year's Eve) falls on a Sunday, the hours of operation, on December 31, for any licensed premises holding a valid distilled spirits and wine retail drink license, or a malt beverage retail drink license, or a special one-day license issued by the state Alcoholic Beverage Control Board, shall be from 12:00 p.m. to 1:00 a.m. Monday morning. This division does not include package liquor stores, nor does it exempt retailers from observing all other conditions and requirements under any other ordinance or laws of the Commonwealth of Kentucky.

(Ord. 88-11, passed 8-8-88; Am. Ord. 2006-09, passed 11-16-06; Am. Ord. 2007-03, passed 2-15-07; Am. Ord. 2008-18, passed 12-22-08; Am. Ord. 2009-06, passed 7-15-09; Am. Ord. 2013-09, passed 12-12-13;) Penalty, see § 116.99

§ 116.07 TERMINATION OF LICENSE.

Each license issued hereunder shall terminate on April 30 following the issuance thereof. Should any such license be issued by the city and any required city, county, or federal approval, certification, or licensing not be obtained by the applicant or should same be voluntarily or involuntarily withdrawn, removed, relinquished, or suspended, then the license issued hereunder by the city shall immediately become null and void and shall be surrendered to the City Administrator. Any license fee paid shall thereupon be automatically forfeited and shall not be prorated. Following a license suspension or revocation, a new license may be applied for upon the making of a new application and the payment of a new license fee.

(Ord. 88-11, passed 8-8-88; Am. Ord. 2013-09, passed 12-12-13)

REGULATIONS CONCERNING MINORS

§ 116.20 DEFINITION.

For the purpose of §§ 116.21 through 116.26, the following definition shall apply unless the context clearly indicates or requires a different meaning.

PREMISES. The meaning given in §116.01 and KRS 241.010, and also the place of business of a person licensed to sell alcoholic beverages, including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.

(Ord. 88-11, passed 8-8-88; Am. Ord. 2013-09, passed 12-12-13)

§ 116.21 SALES TO MINORS PROHIBITED.

It shall be unlawful for any person to sell alcoholic beverages to a person under 21 years of age. (Ord. 1020.3, passed 1-12-59; Am. Ord. 2013-09, passed 12-12-13) Penalty, see § 116.99

§ 116.22 UNLAWFUL ACTS BY PERSONS UNDERAGE.

(A) A person under 21 years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.

(B) It shall be unlawful for any person under the age of 21 years to possess, purchase, or attempt to purchase, or engage another to purchase for him or her, directly or indirectly, any alcoholic beverages.

(C) It shall be unlawful for any person under 21 years of age to misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.

(D) A person under 21 years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.

(E) A person under 21 years of age shall not use or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

(F) Except as provided in KRS 244.087 and 244.090, a licensee, or his or her agents, servants, or employees shall not permit any person under 21 years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:

(1) The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, small farm winery, distillery or brewery or winery tour, convenience store, grocery store, drug store, or similar establishment;

(2) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises;

(3) Written approval had been granted by the department to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event, including but of limited to weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state director shall approve or deny the request in writing; or

(4) The usual and customary business of the establishment is an entertainment facility where prebooked concerts are held. For the purpose of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts. During the times minors are on the premises under this paragraph the licensee shall comply with all provisions of KRS 244.085(6)(d).

(G) Excepts as provided in division (F) of this section, a licensee or the licensee's agent, servant, or employee shall not allow any person under the age of 21 to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.

(H) Except as provided in division (F) of this section, a person under the age of 21 shall not remain on any premises that sell alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.

(I) A violation of division (A), (B), (C), (D) or (H) of this section shall be deemed a status offense if committed by a person under the age of 18 subject to the jurisdiction of the juvenile session of the district court.

(Ord. 1020.3, passed 1-12-59; Am. Ord. 2013-09, passed 12-12-13)

§ 116.23 AIDING OR ASSISTING PERSONS UNDERAGE.

It shall be unlawful for any person to aid or assist any person under the age of 21 years in purchasing, or having served or delivered to the underage person, or in any way procuring directly or indirectly any alcoholic beverages.

(Ord. 1020.3, passed 1-12-59; Am. Ord. 2013-09, passed 12-12-13) Penalty, see § 116.99

§ 116.24 GIFT CARD FOR ALCOHOLIC BEVERAGES TO BE REDEEMED ONLY BY PERSONS 21 AND OLDER.

No person under the age of 21 may redeem a gift card or any portion of a gift card for the purchase of alcoholic beverages. A person holding a license under KRS 243.030 or 243.040 may redeem a gift card for the purchase of alcoholic beverages if the person presenting the card is 21 years of age or older.

(Ord. 2013-09, passed 12-12-13) Penalty, see § 116.99

§ 116.25 ENFORCEMENT BY STATE ALCOHOLIC BEVERAGE CONTROL BOARD.

Any fine or penalty imposed under this subchapter shall be in addition to and independent of any action which may be taken by, through, or on behalf of the state Alcoholic Beverage Control Board or its agents.

(Ord. 1020.3, passed 1-12-59; Am. Ord. 2013-09, passed 12-12-13)

DISORDERLY CONDUCT**§ 116.26 RETAIL PREMISES NOT TO BE DISORDERLY; ACTS CONSTITUTING DISORDERLY BEHAVIOR.**

(A) A retail licensee, a patron, or the licensee's agents, servants, or employees shall not cause, suffer, or permit the licensed premises to be disorderly.

(B) Acts which constitute disorderly premises consist of causing, suffering, or permitting patrons, the licensee, or the licensee's servants, agents, or employees to cause public inconvenience, annoyance, or alarm, or create a risk through:

- (1) Engaging in fighting or in violent, tumultuous, or threatening behavior;
- (2) Making unreasonable noise;
- (3) Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency;
- (4) Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;
- (5) Creating a public nuisance;
- (6) Engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor; or
- (7) Failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or a local government, or by state administrative regulations, for the licensed premises.
(Ord. 2013-09, passed 12-12-13) Penalty, see § 116.99

OUTDOOR DINING**§ 116.35 LOCATION OF PERMITTED AREAS.**

Tables and chairs used for outdoor dining shall be permitted upon city sidewalks located between Harrison Street and Depot Street and fronting upon Main Street, also including those premises located within one block in either a northerly or southerly direction of Main Street on Proctor Knott Avenue, Spalding Avenue, or Depot Street, in front of or alongside any business establishment operated as a

restaurant, holding a valid or occupational license for the sale of food and beverage only, upon the issuance of a permit agreement with the city authorizing such activity, so long as the same shall not obstruct, impede or endanger the free flow of pedestrian traffic.

(Ord. 07-10, passed 6-18-07; Am. Ord. 2013-09, passed 12-12-13) Penalty, see § 116.99

§ 116.36 PERMIT FEE.

The city shall assess an annual fee of \$10 for the issuance or renewal of any permit agreement. (Ord. 07-10, passed 6-18-07; Am. Ord. 2013-09, passed 12-12-13)

§ 116.37 PERMIT APPLICATION.

(A) Applications for such permit agreement shall be made to the City Clerk and approved by the city License Inspector.

(1) In the event that the applicant is, or is seeking to be, an establishment serving alcoholic beverages, the application for outdoor dining permit agreement must first be approved (in addition to any documentation and/or application for status as a “licensed premises” under KRS Chapter 244) by the city Alcoholic Beverage Control Administrator.

(2) Such permit agreement may be suspended or revoked, for cause, upon hearing before the City Council.

(B) Applicants shall utilize the appropriate permit agreement application and form found in Appendices A and B, as amended from time to time.

(C) Any applicant may appeal the denial of any application, or any licensee may appeal the suspension or revocation of any existing permit agreement, within 30 days to the county circuit court, as provided by law.

(Ord. 07-10, passed 6-18-07; Am. Ord. 2013-09, passed 12-12-13)

§ 116.38 PACKAGING PROHIBITION.

No restaurant holding a permit under this subchapter shall serve, or allow to be served, to its patrons, invitees, or other persons upon the permitted area, alcoholic beverages in original manufacturers’ packaging.

(Ord. 07-10, passed 6-18-07; Am. Ord. 07-13, passed 9-10-07; Am. Ord. 2013-09, passed 12-12-13) Penalty, see § 116.99

§ 116.39 CITY'S RETENTION OF SIDEWALKS AND PEDESTRIAN RIGHTS-OF-WAY.

Nothing herein shall be construed to convey, transfer, assign, or otherwise encumber the city's title to any sidewalk and/or pedestrian right-of-way.

(Ord. 07-10, passed 6-18-07; Am. Ord. 2013-09, passed 12-12-13)

§ 116.99 PENALTY.

(A) Any person violating any provision of §§ 116.02 through 116.07 shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 for each offense, and each day in which a violation shall occur shall be deemed to constitute a separate offense. Any person or licensee violating any provision of §§ 116.02 through 116.07 twice in a 24-month period shall have, in addition to the fines involved, all alcoholic beverage licenses issued by the city revoked, and all license fees paid shall thereupon be automatically forfeited and shall not be prorated.

(B) Any person who violates any provision of § 116.21 shall be guilty of a misdemeanor and subject to a fine of \$100 and not more than \$500 in addition to court cost. The punishment provided herein shall apply not only to the holder of any alcoholic beverage licensee, but also to any employee or clerk of the licensee.

(C) Any person violating any provision of § 116.22 and 116.24 shall be guilty of a violation and shall be fined a minimum of \$20 and a maximum of \$50 in addition to court costs.

(D) Any person who violates any provision of § 116.23 shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$100 and not more than \$500 in addition to court costs.

(E) Any owner or licensee of such establishment violating any provision of § 116.26 shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 for each offense, and each day in which a violation shall occur shall be deemed to constitute a separate offense. Any person or licensee violating any provision of § 116.26 twice in a 24-month period shall have, in addition to the fines involved, all alcoholic beverage licenses issued by the city revoked, and all license fees paid shall thereupon be automatically forfeited and shall not be prorated.

(Ord. 1020.3, passed 1-12-59; Am. Ord. 88-11, passed 8-8-88; Am. Ord. 2013-09, passed 12-12-13)

APPENDIX A: OUTDOOR DINING PERMIT AGREEMENT.

PERMIT AGREEMENT

This AGREEMENT is entered into this ____ day of _____, 20 ____, by and between the City of Lebanon, Kentucky, a municipal corporation of the second class (the city), and (the permit holder), in conjunction with City Ordinance No. 07-10, as may be amended.

WHEREAS, the city is the owner of the sidewalk and/or pedestrian rights-of-way along the front and/or side of the permit holder’s premises; and

WHEREAS, the permit holder is the owner/leaseholder/occupant/licensee of the premises located at _____ and operating a business establishment at such location, which business is a restaurant, commonly known as _____, which is directly adjacent to the said city sidewalk and/or pedestrian rights-of-way; and

WHEREAS, the permit holder desires to utilize a portion of the said city sidewalk and/or pedestrian rights-of-way for outdoor dining; and

WHEREAS, the permit holder also has a current occupational license with the city;

NOW THEREFORE, IT IS HEREBY AGREED, as follows:

The city hereby grants to the permit holder, a permit to utilize the said city sidewalk and/or pedestrian rights-of-way along the front and/or side of the permit holder’s premises (i.e., the permitted area), for the purpose of outdoor dining.

The term of this permit agreement shall be for a period of one (1) year, commencing on July 1 of the year, and shall automatically be renewable, on a yearly basis, from July 1 of each year forward, to

coincide with the issuance of the occupational license for such premises. However, this permit shall immediately expire upon notice of non-renewal being given by either party within thirty (30) days prior to expiration. This permit shall be subject to revocation in the event of the permit holder's failure to maintain a current occupational license for the premises or to obtain the requisite insurance coverage set forth below.

The permit holder shall be required to pay the city an annual fee of ten dollars (\$10.00) for the issuance or renewal of any permit agreement.

The permit holder shall be prohibited from making any permanent improvements within the permitted area, and shall only be permitted to maintain suitable tables and chairs that can easily be removed therefrom.

The permit holder shall be required to place any tables, chairs or other obstructions within the permitted area so as not to impede the free flow of pedestrian traffic.

The permit holder shall comply with all building, fire and safety codes and health department regulations required in conjunction with the use of this permit

The permit holder shall maintain and repair the permitted area and shall keep the same in a clean, safe and healthy condition, free and clear from all trash, during the time of this permit agreement.

The permit holder shall indemnify and hold the city harmless from any loss, damage, claims, causes of action or expense which the city may incur or suffer with respect to any claim based upon the permit holder's use or occupancy of the permitted area.

The permit holder shall further be required to maintain comprehensive general liability insurance coverage, which shall protect against all claims of personal injury, death or property damage occurring upon the permitted area, resulting from the permit holder's use thereof under the terms and conditions

of this permit agreement, and shall supply the city with proof of such coverage at the time of the issuance and subsequent renewals.

This permit agreement shall not be assigned without prior written consent of the city.

This permit agreement shall only apply to those establishments that are not licensed to sell alcoholic beverages.

IN WITNESS WHEREOF, the parties have executed this permit agreement as of the first date written above.

CITY OF LEBANON, KENTUCKY

BY:
NIKKI WHEATLEY , City Clerk

BY:
JOHN THOMPSON , City License Inspector

PERMIT HOLDER

BY:

TITLE:

(Ord. 07-10, passed 6-18-07)

APPENDIX B: OUTDOOR DINING PERMIT AGREEMENT, ALCOHOLIC BEVERAGE SALES.

PERMIT AGREEMENT
Alcoholic Beverage Sales

This AGREEMENT is entered into this ____ day of _____, 20 ____, by and between the City of Lebanon, Kentucky, a municipal corporation of the second class (the city), and (the permit holder), in conjunction with City Ordinance No. 07-13, as may be amended.

WHEREAS, the city is the owner of the sidewalk and/or pedestrian rights-of-way along the front and/or side of the permit holder’s premises; and

WHEREAS, the permit holder is the owner/leaseholder/occupant/licensee of the premises located at _____ and operating a business establishment at such location, which business is a restaurant, commonly known as _____, which is directly adjacent to the said city sidewalk and/or pedestrian rights-of-way; and

WHEREAS, the permit holder also has a current occupational license with the city; and

WHEREAS, the permit holder has a current alcoholic beverage control license issued by the City of Lebanon and the State Alcoholic Beverage Control Board;

NOW THEREFORE, IT IS HEREBY AGREED, as follows:

The city hereby grants to the permit holder a permit to utilize the said city sidewalk and/or pedestrian rights-of-way along the front and/or side of the permit holder’s premises (hereinafter collectively referred to as “the permitted area”) for the purpose of outdoor dining.

The term of this permit agreement shall be for a period of one (1) year, commencing on July 1 of the year of issuance, expiring on June 30 of the following year, and shall automatically be renewable, on a yearly basis, from July 1 of each year forward, to coincide with the issuance of the occupational license for the permitted area. However, this permit shall immediately expire upon notice of non-renewal being given by either party within thirty (30) days prior to expiration. This permit shall be subject to revocation in the event of the permit holder's failure to maintain a current occupational license for the premises, to obtain the requisite insurance coverage set forth below, to comply with any provision of this permit, or to maintain a valid, unrestricted alcoholic beverage license.

The permit holder shall inspect and maintain control over the area where its patrons are permitted to dine and consume beverages pursuant to this permit, and shall maintain said premises/area in an orderly manner. Permit holder shall also insure that no patron drinks alcoholic beverages in bottles, cans or other original manufacturers' packaging.

The permit holder shall be required to pay the city an annual fee of ten dollars (\$10.00) for the issuance or renewal of any permit agreement.

The permit holder shall be prohibited from making any permanent improvements within the permitted area without the written consent of the city, and shall only be permitted to maintain suitable tables and chairs which can easily be removed therefrom.

The permit holder shall be required to place any tables, chairs or other obstructions within the permitted area so as not to impede the free flow of pedestrian traffic.

The permit holder shall comply with all building, fire and safety codes and health department regulations required in conjunction with the use of this permit.

The permit holder shall maintain and repair the permitted area and shall keep the same in a clean, safe and healthy condition, free and clear from all trash and debris, during the time of this permit agreement.

The permit holder shall indemnify and hold the city harmless from any loss, damage, claims, causes of action, or expense which the city may incur or suffer with respect to any claim based upon the permit holder's use or occupancy of the permitted area.

The permit holder shall further be required to maintain comprehensive general liability insurance coverage, which shall protect against all claims of personal injury, death or property damage occurring upon the permitted area, resulting from the permit holder's use of the permitted area under the terms and conditions of this permit agreement, and shall supply the city with proof of such coverage at the time of the issuance and subsequent renewals of this permit.

This permit agreement shall not be assigned without prior written consent of the city.

This permit agreement shall only apply to those establishments which are restaurants licensed to sell alcoholic beverages.

IN WITNESS WHEREOF, the parties have executed this permit agreement as of the first date written above.

CITY OF LEBANON, KENTUCKY

BY:
NIKKI WHEATLEY , City Clerk

BY:
JOHN THOMPSON , City License Inspector

Certification that Alcoholic Beverage License has been approved locally:

Nature of License Approved:

BY: _____
SHELTON YOUNG , Chief, Lebanon Police Department
City ABC Administrator

PERMIT HOLDER

BY:

TITLE:

(Ord. 07-10, passed 6-18-07; Am. Ord. 07-13, passed 9-10-07)

CHAPTER 117: AMUSEMENTS

Section

Pool and Billiards

- 117.01 Location requirements
- 117.02 Hours of operation

Marion County Country Ham Days Festival

- 117.15 Marion County Country Ham Days
- 117.16 Bicycles, roller skates, skateboards and the like prohibited

Carnivals

- 117.30 Operation unlawful
- 117.99 Penalty

POOL AND BILLIARDS

§ 117.01 LOCATION REQUIREMENTS.

(A) It shall be unlawful for any person, persons, firm or corporation to maintain or operate for profit any pool tables or hall or billiard tables or hall in the city except on premises which are on the ground or street level.

(B) Before any person, persons, firm or corporation shall maintain or operate for profit, any pool tables or halls or billiard tables or halls at any place in the city, said applicant, person, persons, firm or corporation shall first obtain approval, initially and annually thereafter, of the applicant and the location thereof from the City Council before said license shall issue.

(Ord. 430.1, passed 10-4-49) Penalty, see § 117.99

§ 117.02 HOURS OF OPERATION.

No place of business in which billiard or pool tables are operated shall be open during the hours between 12:00 midnight and 6:00 a.m. on any day nor at any time on Sunday.
(Ord. 430.2, passed 6-3-52) Penalty, see § 117.99

MARION COUNTY COUNTRY HAM DAYS FESTIVAL**§ 117.15 MARION COUNTY COUNTRY HAM DAYS.**

(A) *Establishment of dates, times and vendor rules for festival.* The dates for the annual fall festival known as Marion County Country Ham Days shall be the last full weekend in the month of September each year, or such other consecutive days as are designated and advertised to the City Council by the operating authority, the Marion County Chamber of Commerce, not later than August 1 of each year. The Marion County Chamber of Commerce shall also establish annually the hours of operation, and schedule of events, for Marion County Country Ham Days as well as all rules and regulations for vendors or exhibitors to observe during Marion County Country Ham Days.

(B) *Advance approval required.* All persons, corporate entities, or other individuals, groups or associations of persons desiring to operate any business, including but not limited to any type of concession, booth or trading stall within the barricaded festival area during the duration of the Marion County Ham Days fall festival must first procure the approval of the Marion County Chamber of Commerce Board of Directors, which operates the festival.

(C) Division (B) shall apply to those businesses or booths which are established to operate only temporarily during the period of time designated as the Marion County Country Ham Days week/weekend by the Marion County Chamber of Commerce Board of Directors and does not apply to a business which operates during the Marion County Country Ham Days festival period according to the business' permanent schedule of operations throughout the calendar year.

(D) *Cooperative efforts to enforce rules and regulations.* The Lebanon Police Department is hereby authorized to assist the Marion County Chamber of Commerce throughout the corporate limits of the city as needed for enforcement of the rules and regulations established by the Marion County Chamber of Commerce Board of Directors pertaining to Marion County Country Ham Days, particularly with regard to traffic, parking, alcoholic beverage control, vendor sales and behavior, or crowd safety, control and dispersion. The Marion County Chamber of Commerce Board of Directors shall provide the Lebanon Police Department with an event schedule, map of event and vendor layouts, and comprehensive set of rules and regulations governing the festival in advance of the festival dates to properly prepare for enforcement needs during the festival.

(Ord. 430.3, passed 4-19-76; Am. Ord. 2017-03, passed 6-20-17)

Cross-reference:

Regulation of flea markets, see § 114.02

§ 117.16 BICYCLES, ROLLER SKATES, SKATEBOARDS AND THE LIKE PROHIBITED.

It shall be illegal for anyone, other than parade participants prior to, during and immediately after the Festival Parades, to operate any bicycle, unicycle, roller skates or skateboard on the streets and sidewalks of the city in the designated festival area during the duration of the Marion County Country Ham Days Festival. Further, the Police Department shall confiscate any such device for the period of the Marion County Country Ham Days Festival and return it to its rightful owner after the festival has concluded.

(Ord. 81-14, passed 9-15-81; Am. Ord. 2017-03, passed 6-20-17)

CARNIVALS

§ 117.30 OPERATION UNLAWFUL.

It shall be unlawful for any person, firm or corporation to operate a carnival or other similar type of exhibition within the city limits.

(Ord. 1020.1, passed 5-3-49) Penalty, see § 117.99

§ 117.99 PENALTY.

(A) Any person, firm or corporation violating the provisions of § 117.01 shall be guilty of a misdemeanor and shall be fined not less than \$20 nor more than \$25 for each offense, and each day during which a violation of § 117.01 exists or occurs shall constitute a separate offense. (Ord. 430.1, passed 10-4-49)

(B) Any person, firm or corporation violating the provisions of § 117.02 shall be guilty of a violation and shall be fined not less than \$10 nor more than \$100 for each offense. (Ord. 430.2, passed 6-3-52)

(C) Whoever violates §§ 117.15 or 117.16 shall be guilty of a violation and shall be fined not less than \$50 or not more than \$100, upon conviction of violation. (Ord. 430.3, passed 4-19-76)

(D) Any person, firm or corporation violating the provisions of § 117.30 shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500, and each day during which the provisions of § 117.30 are violated shall constitute a separate offense. (Ord. 1020.1, passed 5-3-49)

CHAPTER 118: ADULT ENTERTAINMENT

Section

- 118.01 Definitions
- 118.02 Adult entertainment establishments
- 118.03 Licenses
- 118.04 Premises to furnish clear view
- 118.05 Restrictions on advertisement

§ 118.01 DEFINITIONS.

The following words, terms and phrases, when used in this chapter shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning;

ADULT DANCING. Includes but not be limited to any dancing which exposes to view by patrons or spectators on the premises at any time the specified anatomical areas and/or consists of specified sexual activities, both as set forth above.

ADULT ENTERTAINMENT ESTABLISHMENT. An adult motion picture theater, massage parlor or establishment, an adult book store, an adult escort service, or any other business establishment whose principal business use or regular business use, is to offer adult oriented entertainment or matter as characterized by an emphasis on specified sexual activities and/or exposure of specified anatomical areas. Adult oriented entertainment shall mean any exhibition, live performance, display or dance of any type which has as a significant or substantial portion of such performance any specified sexual activities as defined herein, or the exhibition of any specified anatomical area.

ENTERTAINMENT AREA. An area in an adult entertainment establishment consisting of a platform or other structure raised not less than 18 inches above the immediately surrounding main floor area and encompassing an area of at least 100 square feet.

PERSON. An individual, firm, partnership, joint venture, association, independent contractor, corporation (domestic or foreign), trust, estate, assignee, receiver or any other group or combination acting as a unit.

PREMISES. The entire property, interior and exterior, including parking lots and other outside areas.

SPECIFIED ANATOMICAL AREAS. Includes, but not be limited to the following;

(1) Less than completely and opaquely covered human genitals or pubic region, the cleavage of the human buttock, any portion of the human female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(2) The human male genitals in a discernible turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Includes, but not be limited to, bestiality, erotic or sexual stimulation with objects or mechanical devices, human genitalia in a state of sexual stimulation, arousal or tumescence, fondling, touching of human genitalia, pubic region, buttock, anus or female breast, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, or sodomy, or any excretory functions as part of or in connection with any of the activities set forth above.

(Ord. 98-5, passed 8-10-98)

§ 118.02 ADULT ENTERTAINMENT ESTABLISHMENTS.

(A) *General requirements.* In addition to the licensing and other general requirements contained in this chapter relating to adult entertainment establishments, each adult entertainment establishment shall comply with the following requirements;

(1) *Prohibited activities.* No person shall display or expose specified anatomical areas or simulate specified sexual activities individually or with any patron, spectator, employee or other person on the premises of an adult entertainment establishment.

(2) *Entertainment area.* No person in an adult entertainment establishment shall engage in any form of entertainment or dancing except while said person is positioned in or occupying an entertainment area, as defined above, and while the person so dancing, performing, displaying or exhibiting is positioned not less than six feet from any patron or spectator.

(3) *Entertainment area exclusion.* No spectator, patron, or person who is not employed by the adult entertainment establishment shall be present in an entertainment area, as defined above, during the course of any adult entertainment, dancing or performance.

(4) *Physical contact prohibition.* While on the premises of an adult entertainment establishment, no employee thereof shall be permitted to have any physical contact with any other employee thereof, patron, spectator or other person while that employee is entertaining, dancing or performing, and all such performances shall occur only in an entertainment area. No employee of the

adult entertainment establishment shall touch the breast, buttock, or genitals of any patron, spectator, person, or other employee of the adult entertainment establishment, and no patron, spectator, or other person, shall touch the breast, buttock, or genitals of any employee of the adult entertainment establishment, patron, spectator, or other person, while on the premises of the adult entertainment establishment. No person on the premises of an adult entertainment establishment shall be permitted to use or be present in areas partitioned or screened from public view and which are designed to be occupied, together or alone, by any person or persons for the display of or exhibition of specified anatomical areas.

(5) *Age restriction.* No person under 18 years of age shall be permitted in an adult entertainment establishment.

(6) *Business hours.* No adult entertainment establishment shall be open for business between the hours of 12:00 a.m. and 6:00 a.m. each day or at any time during the 24 hours of a Sunday.

(B) *Penalty.* Any person who shall violate any of the provisions of § 118.02 shall, upon conviction thereof, be fined not more than \$500 or imprisoned for a period of not more than 12 months, or both so fined and imprisoned, and each day of violation shall be considered to be a separate offense. (Ord. 98-5, passed 8-10-98)

§ 118.03 LICENSES.

(A) *General requirements.* No person shall own an adult entertainment establishment as defined in § 118.01 without first obtaining an adult entertainment establishment license. No person shall operate an unlicensed adult entertainment establishment.

(B) *Application process.* The owner of an adult entertainment establishment shall apply for a license with the City Clerk. The applicant shall complete an application on the form prescribed by the city and shall submit the following information;

(1) The name and business address of the establishment, including any assumed or fictitious names under which the establishment is or will be operated.

(2) The name, including any assumed or fictitious name or alias, business address, social security or tax identification number of the owner and every officer, partner, director, or person performing a similar function to an officer, partner or director and the names and addresses of all individuals who own 10% or more of the partnership, corporation, limited liability corporation or company, or limited liability partnership, which is the owner of the establishment.

(3) In the event the owner of the adult entertainment establishment is not the owner of record of the real property on which the establishment is located or is to be located, the application shall include a notarized statement from the owner(s) of record of the real property acknowledging that an

adult entertainment establishment is located or is to be located on the real property upon the issuance of the license. The applicant also shall furnish the name and address of the owner(s) of record of the real property and a copy of the lease or rental agreement or memorandum thereof.

(4) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of all persons engaged in the day to day management of the adult entertainment establishment. All person who at any time shall be responsible for attending the entrance of the establishment for the purpose of compliance with this chapter shall be included in this subsection.

(5) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of the individual designed by the applicant to undertake to keep the applicant, if licensed, at all times in compliance with the restrictions, requirements, and conditions set forth in this chapter, together with the written statement of such individual stating that he has received a copy of this chapter and that he willfully undertakes on behalf of the applicant to comply therewith.

(6) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of the individual designed by the applicant to be responsible for keeping current the information required hereunder at all times together with a written statement from such individual stating that he has received a copy of this chapter and that he willfully undertakes on behalf of the applicant to comply with the requirements herein pertaining to the disclosure of information.

(7) The nature of the activity or activities to be engaged in at such location.

(8) A criminal record report for the applicants, owners, officers, directors, partners, employees or other persons whose names are required pursuant to this section together with a list of all criminal convictions of such persons within the last five years for the offenses listed below in this chapter. Any of such persons who is on parole shall submit with the application the terms of the parole.

(9) The name and mailing address of the owner to whom notice will be given in case of violations or other matters affecting the license hereunder.

(10) The applicant must submit to fingerprinting by the City Police Department.

(11) The applicant must be current on all fees or taxes of any kind or nature owed to the city.

(12) The premises to be licensed must meet all established zoning, fire, building, and/or plumbing codes and cannot provide direct interior access to residential living quarters.

(13) The applicant shall file a floor plan exhibiting all entrances, exits, stairways, and all rooms in the building and their intended uses, for purposes of enabling the city to provide emergency services.

(C) *Supplemental information.* The information required by subsection (B) of this section shall be kept current at all times even after the granting of the adult entertainment license. It shall be the responsibility of the owner or other person designated in the license application to notify the City Clerk, in writing, no later than 48 hours after the effective date of any change, alteration or modification in any information contained in the application.

(D) *Review process.* The Building Inspector or his designee shall inspect the premises proposed to be licensed within 15 days after the completed application and all information required by this chapter has been submitted and the application fee has been paid. The Building Inspector shall report to the City Clerk, who shall issue a license if all restrictions, requirements, conditions, and all applicable requirements of this chapter and other applicable laws have been met. The City Clerk shall grant or deny a license application within 20 days of the filing of such application.

(E) *Prohibitions.* No adult entertainment establishment license shall be issued if the applicant or any operator, officer, director, partner or shareholder;

(1) Is less than 18 years of age;

(2) Has been convicted of any of the following offenses within five years of the date of the application;

(a) Gambling, conspiracy to promote gambling, or possession of gambling records or gambling devices;

(b) Prostitution promoting prostitution, permitting prostitution, or solicitation for the purpose of prostitution;

(c) The sale, transfer, possession or use of any controlled substance;

(d) Any sexual offenses, including rape, sodomy, sexual abuse, sexual misconduct or indecent exposure;

(e) Distribution of obscene material to a minor, use of a minor to produce, promote, or distribute obscene material, advertising obscene materials, or promoting the sale of obscenity;

(f) Unlawful transaction with a minor (as defined in KRS Chapter 530 or other similar laws), use of a minor in a sexual performance, promoting a sexual performance by a minor, or possession of or advertising matter portraying a sexual performance by a minor; or

(g) Murder, manslaughter, or felony assault (as defined in KRS Chapters 507 or 508 or similar laws);

(3) Has failed in the operation of an adult entertainment establishment to comply with any health, zoning, fire or building code enacted or adopted by the city and has failed to correct such violation as provided in this chapter.

(F) *Notice.* If the Building Inspector's inspection reveals a failure to comply with any provisions of this chapter or of any required code, regulation or law, the Building Inspector shall notify the applicant in writing of that fact, stating what failures have been discovered, allowing a reasonable time to correct such defects and informing the applicant of the appeal procedure if the applicant does not agree with the Building Inspector's decision or finding.

(G) *No transfer of license.* The adult entertainment establishment license issued under this chapter does not authorize the operation of an adult entertainment establishment at any place other than the address designated in the application and such license is not transferable. A transfer is deemed to occur when the business is sold, leased or subleased, when securities which constitute a controlling interest in the business are sold or otherwise exchanged, or a trust, gift or other similar legal device is established which transfers the ownership or control of the business, except for a transfer by bequest or other operation of law upon the death of the natural person possessing the ownership or control of the business.

(H) *Access to licensed premises.* The application for or the granting of an adult entertainment establishment license is deemed to permit periodic inspections by law enforcement officers, or by other persons designated or authorized by the Building Inspector, of all areas of any establishment requiring a license under this chapter for the purpose of verifying compliance with the terms and conditions of this chapter. It shall be unlawful for an applicant, licensee, owner, operator or employee of an adult entertainment establishment to refuse to permit a law enforcement officer or authorized person to inspect the entire premises or any part thereof at any time during the normal business hours of the establishment, or at any time the establishment is open or occupied.

(I) *Application and license fee.* Concurrent with the submission of a license application, the applicant shall pay to the city a nonrefundable fee of \$100. Every adult entertainment establishment shall pay to the city an annual license fee of \$3,000, which fee is due and payable upon the issuance of a license and on or before July 1 of each year thereafter. When a license is first issued, the annual fee may be prorated at the rate of \$250 per month for the remaining months of the current fiscal year, which prorated fee is fully due and payable upon the issuance of the license. Provided, however, that no license shall be issued for less than the sum of \$1,500. No licensee shall be rebated any portion of any license fee paid to the city.

(J) *Expiration.* Each license shall expire on June 30 of each calendar year, unless earlier suspended or revoked. Application for a new license should be made at least 30 days prior to the expiration date.

(K) *Suspension.* The Building Inspector may suspend an adult entertainment establishment license for a period of not to exceed 30 days if the Building Inspector determines that the applicant, owner, operator or any employee thereof has violated any provision of this chapter, has been on the adult entertainment establishment premises while intoxicated or in a disorderly condition (consistent with the definition of disorderly conduct contained in KRS Chapter 525), has refused to allow an inspection of the premises or any part thereof, or has knowingly permitted any violation of state law to occur on the premises.

(L) *Revocation.* The Building Inspector shall revoke an adult entertainment license if he determines that;

(1) Cause for suspension under division (K) above occurs and the license has been suspended within the preceding 12 months;

(2) An applicant knowingly gave false or misleading information in the initial license application or in any subsequent license application;

(3) An applicant, owner, operator or employee has knowingly allowed possession, use or sale of controlled substances on the premises;

(4) An applicant, owner, operator, or employee has knowingly allowed prostitution or solicitation for prostitution on the premises;

(5) An applicant, owner, operator, or employee has knowingly operated an adult entertainment establishment during a period of time when the establishment's license was suspended; or

(6) An applicant, owner, operator, or employee has knowingly allowed a violation specified in division (E) above to occur on the premises.

(M) *Hearing for denials suspension or revocation; appeal.* If the Building Inspector determines that grounds exist to deny, suspend or revoke an adult entertainment license, the Building Inspector shall notify the applicant or licensee in writing of the Building Inspector's intent to deny, suspend or revoke, including the grounds therefor. The notice shall be sent to the applicant or licensee by certified mail at the address specified in the application and a copy shall be sent to the City Clerk. Within five business days of receipt of such notice, the applicant or licensee may provide to the Building Inspector, in writing, a response which shall include a statement of reasons why the license should not be denied, suspended or revoked and may include a request for a hearing. A copy shall be sent to the City Clerk. If a response is not timely received by the Building Inspector, the notice shall be a final administrative act of denial, suspension or revocation. If a timely response is received by the Building Inspector, he shall, within three business days of his receipt of the response, either withdraw the written notice of intent to deny, suspend or revoke by giving notice of such withdrawal to the applicant or licensee or schedule a hearing before the City Council and shall give notice of such hearing to the applicant or licensee. A copy thereof shall be provided to the City Clerk. The hearing shall be informal in nature and shall be conducted within 20 business days of the Building Inspector's receipt of the applicant's or licensee's response. The City Council shall issue an oral decision at the conclusion of the hearing and shall render a written decision within five business days after the completion of the hearing and shall serve the applicant or licensee with a copy of the decision by certified mail. The applicant or licensee may appeal a decision of the City Council to the Marion Circuit Court after receipt of the written notice of the decision. If an applicant or licensee pursues a judicial appeal of a final decision of the City Council, then that licensee or applicant may continue to operate the adult entertainment establishment pending the completion of judicial review.

(N) *Penalty.* Any person who shall violate any of the provisions of § 118.03 of this chapter shall, upon conviction thereof, be fined not more than \$500 or imprisoned for a period of not more than 12 months, or both so fined and imprisoned, and each day of violation shall be considered a separate offense.

(Ord. 98-5, passed 8-10-98)

§ 118.04 PREMISES TO FURNISH CLEAR VIEW.

(A) *General requirements.* An adult entertainment establishment shall at all times provide a clear view of the entire area open to the public, from the front entrance to the entertainment area. No partition, box, stall, screen, curtain, plant or other object shall be installed or placed so as to obstruct the view or the general observation from the front entrance of persons in any entertainment area, however, partitions, subdivision, or panels that are not higher than 48 inches from the floor shall not be construed as obstructing view or the general observation of persons from the front entrance.

(B) *Prohibitions.* The darkening of any portion of the adult entertainment establishment open to the public in any manner as to prevent any person standing at the front entrance from observing the conduct of patrons therein or of the entertainment areas shall be prohibited.

(C) *Penalty.* Any person who violates any of the provisions of this section shall upon conviction thereof, be fined not more than \$500 or imprisoned for a period of 90 days or both so fined and imprisoned and each day of violation shall be considered a separate offense.

(Ord. 98-5, passed 8-10-98)

§ 118.05 RESTRICTIONS ON ADVERTISEMENT.

Any adult entertainment establishment license holder shall be required to identify such business as “adult” in any advertisement. No lettering, words, or representation of matter relating to sexual activities as defined in this chapter shall be contained in any advertisement. Adult entertainment activities or photographs of the same shall not be displayed about or within any adult entertainment establishment in such a manner as to be open to the general public view from outside the adult entertainment establishment. Each application for an adult entertainment establishment license shall be accompanied by a photograph or drawing of any signs to be displayed on or about the exterior of the premises with an indication as to the dimensions of the same. Signage shall be posted in conspicuous locations indicating that persons must be of appropriate age or older to enter.

(Ord. 98-5, passed 8-10-98)