

ORDINANCE NO. 220.7-6-2008

**AN ORDINANCE AMENDING AND RESTATING
FRANKLIN'S "GROSS RECEIPTS LICENSE FEE" AND
"LICENSE FEE FOR EMPLOYEES" ORDINANCES
UNDER ORDINANCE 220.7-5-90, ET SEQ.
OF THE CITY OF FRANKLIN CODE OF ORDINANCES**

WHEREAS, the Kentucky legislature has determined that taxing districts located within the Commonwealth of Kentucky should apply and enforce their respective gross receipts license taxes and employee license taxes in a uniform and consistent manner to ensure that business entities and employees who transact business throughout the Commonwealth are taxed in a fair and reasonable manner, and in proportion to the business which they transact in each taxing district; and,

WHEREAS, to carry out such determination, the Kentucky legislature has enacted a series of statutes which prescribe various definitions, criteria, standards, and enforcement rights and remedies which are to be adopted by each taxing district as part of its gross receipts license tax and employee license tax ordinances; and,

WHEREAS, pursuant to KRS 67.795, the Kentucky legislature has mandated that each tax district adopt these definitions, criteria, standards, and enforcement rights and remedies by no later than July 15, 2008; and,

WHEREAS, compliance with this legislative mandate will necessitate the enactment of a comprehensive series of amendments to the ordinance sections presently codified under Section 220 of the City of Franklin Code of Ordinances, and the renumbering of those ordinance sections; and,

WHEREAS, in light of the comprehensive restructure of these ordinance sections which is required to comply with the aforementioned legislative mandate, it is the consensus of the

Board of Commissioners that additional amendments be made to the ordinance sections to modernize the ordinance section by deleting obsolete provisions, by amending sections to resolve inconsistencies and to create uniformity among the sections, and by renumbering some of the ordinance sections so as to present the ordinance in a more meaningful and understandable manner; and,

WHEREAS, to accommodate all of the foregoing, it is the intent of the Board of Commissioners under this ordinance to amend and restate Franklin's Occupational and Business Licensing regulations under Sections 110, and Peddlers and Solicitors in Section 111 of the City of Franklin Code of Ordinances in accordance with the stated code sections which are provided under this ordinance, which code sections shall be deemed a part of this ordinance.

BE IT ORDAINED by the City of Franklin, Kentucky by and through its City Commission as follows:

OCCUPATIONAL AND BUSINESS LICENSING

GENERAL PROVISIONS

§110.001 DEFINITIONS.

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

ASSOCIATION. A partnership, limited partnership, joint venture or any other form of unincorporated enterprise owned or engaged in by two or more persons.

BUSINESS or BUSINESS ENTITY. Each separate corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted. Provided, however, this definition does not include the usual activities of board of trades, chambers of commerce, or trade associations, or unions; community chest funds or foundations; corporations or other organizations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes, or for the prevention of cruelty to children or animals, or clubs or fraternal organizations operated exclusively for social, literary, educational, or fraternal purposes where no part of the earnings, income, or receipts for such units, groups, or associations enures

to the private benefit of any private shareholder or individual.

BUSINESS RECEIPTS. The sum total of gross receipts from sales plus gross credit or charges for work done and performed or services rendered.

CITY. The City of Franklin, 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 adjusted as follows:

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

(b) 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 which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.

CONSIGNED GOODS. Any goods deposited with another business or person to be sold, disposed of, or called for, whereby title to the goods does not pass until there is an action of the consignee indicating sales.

CONSIGNOR/OWNER OF CONSIGNED GOODS. A business, association, individual or any other entity who owns or has legal title to goods at the time of consignment.

CORPORATION. A corporation or joint stock association organized under the laws of the United States, this state, or any other state, territory, or foreign country or dependency.

EMPLOYEE. Any person who renders services to another person or 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 or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

EMPLOYER. Employer as defined in Section 3401(d) of the Internal Revenue Code.

FIDUCIARY. A person who holds in trust, property, monies, or properties, to which another has a beneficial title or interest, or who receives and controls income for another person.

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

GROSS RECEIPTS. All revenues or proceeds derived from the sale, lease, or rental of goods, services, or property by a business entity reduced by the following:

- (a) Sales and excise taxes paid;
- (b) Returns and allowances; and
- (c) Alcoholic beverage sales subject to license fees pursuant to Ordinance No. 220.500 and all other ordinances relating to and/or regulating alcoholic beverages.

INTERNAL REVENUE CODE. The Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate.

LICENSEE. Any person required to file a return or to pay a license fee under this chapter.

MANUFACTURER. Any individual, co-partnership, corporation, partnership, or association which engages in manufacturing or the manufacturing process, which is defined as follows: material having less commercial value for its intended use before processing but has appreciable commercial value for its intended use after processing by labor, assembly and/or machinery.

NET PROFIT. Gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:

- (a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which 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;
- (b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
- (c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;
- (d) 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
- (e) 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.

OCCUPATION, TRADE, PROFESSION, OR OTHER ACTIVITY. The doing of any kind of work, the rendering of any kind of personal service, or the holding of any kind of position or job within the City, by any clerk, laborer, tradesman, manager, official, or other employee, including any non-resident of the City who is employed by an employer where the relationship between the individual performing the services and the person for whom the services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation if the partner or officer receives a salary for his personal services rendered in the business of that firm or corporation, and shall also include and mean the holding of any kind of office or position, either by election or appointment, by a federal, state, county, or City officer or employee, where the services of that official or employee are rendered within the City.

PAYROLLS. The total wages, salaries, and other personal service compensation, except for severance pay.

PERSON. Any natural person, co-partnership, fiduciary, association or corporation. Whenever the word 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 corporations shall mean the officers and directors thereof.

SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATIONS. The total gross amount of all salaries, wages, commissions, bonuses, and any and all other payments or other considerations which an employee receives from an employer, except for severance pay. The amount paid to traveling salespersons or other workers as allowance or reimbursement for travel or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over expenses actually incurred and accounted for by the employee to his employer are excluded from this definition.

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

TAX DISTRICT. A City of the first to the fifth class, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes; provided, however, that the tax district for the purposes of this ordinance shall be the City of Franklin, Kentucky.

TAXABLE GROSS RECEIPTS. In the case of a business entity having payroll or sales revenues both within and without a tax district, means gross receipts as defined above, as apportioned under §110.042 herein.

TAXABLE GROSS RECEIPTS. In the case of a business entity having payroll or sales revenue only in one (1) tax district, means gross receipts as defined above.

TAXABLE NET PROFIT. In the case of a business entity having payroll or sales revenue only in one (1) tax district, means net profit as defined above.

TAXABLE NET PROFIT. In the case of a business entity having payroll or sales revenue both within and without a tax district, means net profit as defined above, as apportioned under §110.042 herein .

TAXABLE YEAR. The calendar year or fiscal year ending during the calendar year, upon the basis of which net income or gross receipts is computed.

§110.002 OCCUPATIONAL LICENSE FEE; ON WHOM IMPOSED.

There is hereby levied and imposed an annual license fee upon all employees in the City for the privilege of engaging in such occupation, trade, profession, or other activity, which license fee shall be measured by and be equal to 1% of the gross salaries, wages, commissions, and other compensations earned by such persons for work done or services performed or rendered in the City. Where such salaries, wages, commissions and other compensations are earned both within and without the City, the provisions of §110.042 hereinbelow apply.

§110.003 ANNUAL BUSINESS LICENSE FEE.

There is also hereby levied and imposed an annual license fee upon all businesses or manufacturers which pursue, conduct, or carry on any business activity located within the City, or elsewhere, and doing business in the City. The minimum license fee amounts listed herein shall be due and payable by or before January 31st for every year in which business is conducted in the City unless a business begins operation after January 1st of a calendar year wherein the provisions of §110.043 apply. The license fee so imposed shall be in the following listed amounts:

(A) *Manufacturing.*

(1) Minimum license fee \$100.00

(2) Each and every manufacturer subject to this license fee shall pay an annual license fee equal to the total number of employees, including salaried employees, multiplied by \$20. This fee shall be due and payable quarterly, and the number of employees shall be defined as the weekly average of total employment for each quarter for which the license fee is payable.

(3) Consignor/owner of consigned goods. Minimum license fee \$0

Consignors/owners of consigned goods are exempt from the payment of an annual license fee if and only if the business, association, individual, or other entity which acts as the consignee has complied with the provisions of division (B) of this section and has reported the sale and/or sales of the consigned goods in his/her/its total gross receipts for the purpose of calculating the annual license fee under division (B) of this section.

(B) *All other businesses.*

(1) Minimum license fee \$100.00

(2) The license fee for all other businesses shall be calculated by multiplying the amount of gross annual receipts/sales up to and including \$1,000,000 by .0006. In addition, businesses with gross annual receipts in excess of \$1,000,000 shall be taxed an additional amount calculated by multiplying .0001 by any amount in excess of \$1,000,000 and less than \$10,000,000. Any business with gross annual receipts in excess of \$10,000,000 shall be taxed an additional amount calculated by multiplying .00005 by any amount in excess of \$10,000,000.

(C) *Part-time businesses.*

Part-time businesses, provided that they qualify pursuant to the criteria hereinafter set forth, shall be charged one-half of the minimum business license fee, (\$100) or a total of \$50. In order to qualify as a part-time business, an individual must file a verified application with the City requesting to be designated as a part-time business customer and the individual should state that he meets the following requirements:

(1) The business operates 30 hours or less per week.

(2) The business does not have gross annual sales in excess of \$50,000.

(3) The application shall be granted or denied by the City Manager or his designee within 30 days of receipt of the application.

(4) This division affects only the minimum charges for business licenses and does not relieve any business of the obligation to file a return under the provisions of §110.002 of this chapter.

§110.004 EFFECTIVE DATE.

The license fee imposed in this chapter shall become and remain effective after July 1, 2008 as if it does not have an expiration date.

§110.005 LICENSE FEES NOT BASED ON NET PROFITS.

Nothing contained in this chapter shall be construed as imposing an annual license fee based on net profits.

§110.006 IMPOSITION OF LICENSE FEE; APPLICABILITY TO EMPLOYEES.

(A) Employees in general. The license fee is imposed on both residents and non-residents of the City at the rate of 1% of all compensation earned for work done or services performed or rendered in the City.

(B) The following are subject to the license fee:

Compensation received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered as:

(a) An officer, agent, or employee, or both, of a corporation, including a corporation of the first or non-profit class, joint stock association, or joint stock company.

(b) An officer, agent, or employee, as distinguished from a partner or member, of a partnership, limited partnership, or any form of unincorporated enterprise owned by one or more persons.

(c) An agent employee, as distinguished from the proprietor of a business, trade, or profession conducted by an individual owner.

(d) An officer, agent, or employee, whether elected, appointed, enlisted, or commissioned of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section, or unit of the state, or any of the political subdivisions thereof, or those of any other state.

(e) An officer, agent, or employee, whether elected or appointed, of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section, or unit of the United States government, or of a corporation created and owned or controlled by the United States government, or any of its agencies or those of any foreign company or dependency.

(f) An officer, agent, or employee of any other entity.

(C) In the case of individuals whose compensation is earned for services performed both within and without the City and who receive subject payments as set forth in the foregoing rules and regulations, the provisions of Section 110.042 apply.

§110.007 EXEMPTED MONEY RECEIPTS.

The following money receipts are not deemed to be “salaries, wages, commissions, and other compensations” within the meaning of this chapter:

(A) *Old age or retirement programs.* Periodical payments, commonly recognized as old age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment are not subject to the license fee.

(B) *Disability, sickness, accident benefits, and unemployment compensation.* Payments made to employees by an employer under a disability, sickness and accident plan are not subject to the license fee. Unemployment compensation payments made by the state or any other agency are not subject to the license fee.

(C) *Death benefits.* Death benefits payable by an employer to the beneficiary of an employee or to his estate, whether payable in a single lump sum or otherwise, are not subject to the license fee.

(D) *Benefits arising under the Worker's Compensation Act.* Amounts received by employees under the Worker's Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by a suit or agreement on account of the disability, are not subject to the license fee.

(E) Wages, bonuses, salaries or incentive payments to the extent that said wages, bonus, salaries or incentive payments exceed the amount of such compensation subject to federal FICA (social security) withholding.

§110.008 Reserved.

§110.009 CERTAIN BUSINESS ACTIVITIES SUBJECT TO LICENSE FEES.

The following business activities are specifically, but not exclusively, subject to the license fee:

(A) *Trusts.* Whenever a trust estate is engaged in an enterprise, activity, or business which produces income, that activity or business shall be considered subject to the license fee.

(B) *Trading of stocks and securities.* Where a person engages in the buying and selling of stocks, bonds, or other types of securities and these transactions are not isolated and few, but are extended so as to constitute an activity, this shall constitute a business subject to the license fee.

(C) *Fiduciaries.* Money received by a fiduciary is subject income where a fiduciary is regularly engaged in a business or profession as a fiduciary; or is engaged in a business or profession commonly regarded as being incidental or collateral thereto; for example, an attorney at law, real estate agent, and the like; or if such commissions or fees represent a substantial portion of the earnings or income of the fiduciary; or when the administration of the trust requires a substantial portion of the fiduciary's available working time.

(D) *Independent contractors.* An independent contractor is a person who, while performing services for another, is not under the direction and control of such other person as to the result to be accomplished by the work as to the details and means by which that result is accomplished, such as authors, professional persons, seamstresses, laundresses, tailors, and registered nurses.

(E) *Real estate.* The compensation received from the operation of real estate by a business or person is subject to the license fee imposed by this chapter where the operation falls within the classes hereinafter described:

- (1) Warehouses, shopping centers, apartment hotels, and similar structures.

The operation of these types of buildings constitutes a subject activity.

(2) Apartment houses, single dwellings, and other rental property. To the extent that a person owns, controls or rents commercial property or has three or more units of residential rental property, he is engaged in the real estate business. This does not preclude an inquiry into each particular case if it is considered necessary.

(3) All businesses engaged in the rental of real estate or organized for that purpose shall be considered to be engaged in a subject activity.

(4) When any property falls within the classifications above given, the manner of its acquisition (purchase, gift, inheritance, fiduciary, or as fiduciary mortgagee in possession and the like) does not affect the subjectability of the income derived therefrom.

(5) Where the property is located within the City limits, the residence of the beneficiary is immaterial.

§110.010 LICENSE FEE FOR COMPENSATION RECEIVED IN PROPERTY.

Where compensation is received or paid in property, its fair market value at the time of receipt shall be subject to a license fee or to withholding (deduction of the fee at the source). Board and lodging and similar items shall be included in earnings at their fair market value, where such board and lodging is considered part of the compensation paid. However, the value accepted for the purpose of the state and federal payroll taxes may be accepted by the Finance Officer.

SPECIFIC BUSINESSES

§110.020 INSURANCE AGENTS.

(A) Individuals engaged in the sale of insurance may be either employees or independent contractors.

(1) Where the individual is subject to the direct control of another as to the manner of his conduct and is paid a fixed fee, he is considered an employee and the amount of the license shall be withheld at the source.

(2) Where the individual is not under the direct control of another and may conduct the sale as he sees fit, receiving his payment in the form of commission from the sale, he is considered an independent contractor, and shall file his own return and make payment as an independent contractor.

(B) *Commissions subject to license fee.*

(1) In determining whether the commissions payable by reasons of the selling of any policy by an agent resulted from work done or services performed or rendered in the City,

the test shall be the residence of the insured at the time of the issuance of the policy, rather than the actual place of solicitation, except where the solicitation is in the City and the agent's established place of business is within the City, the commission is subject to the license fee regardless of the residence of the insured.

(2) If an agent has an office outside the City as well as an office of his own within the City, the commissions on policies sold to non-residents, if handled through the outside office, are not subject to a license fee, since under such circumstances they are not earnings or profits of an independent City business.

(C) *Group insurance commissions.* Commissions paid on the sale of contracts of group insurance are subject if the group is located within the City as a unit, without regard to the residence of the writing agent.

(D) *Bonuses and incentive payments subject to license fees.* That proportionate part of all bonuses and incentive payments received by an agent, which bears the same ratio to the total amount of bonuses and incentive payments received by him as the amount of commissions received by him on policies sold to residents bears to the total amount of commissions received by him on all policies sold, to both residents and non-residents, is subject to the license fee.

(E) *Advances and drawing accounts.* There are two main types of advances and drawing account payments:

(1) Those which impose upon the agent a written obligation to repay if they are not in fact earned.

(2) Those which, through offset by commissions as earned, cannot be recovered at law even though the agent fails to produce enough business to justify them.

(a) The first of these two types of advance and drawing account payments is in the nature of a loan and accordingly is never subject to a license fee. All commissions or bonuses applied toward the repayment of these types of advancements and drawing accounts are subject in accordance with the rules set forth in this section.

(b) The second type of advance and drawing account payment is subject to compensation when received, to the extent that it exceeds compensation earned.

(F) *Collection of license at source.* It is the duty of all companies doing business in the City, or general agents in the cases of agents whose contracts are with a general agent along and to whom payment is made by general agent out of funds of general agent to deduct or withhold monthly or more often the amounts of license fee due on all compensation paid to agents who are considered employees.

§110.021 RAILROAD TRAIN SERVICE EMPLOYEES.

(A) Railroad employees who perform all of their work within the limits of the City are

subject to the license fee upon their entire gross earnings.

(B) Where these employees serve both within and without the City, the license fee shall be measured by the proportionate share of their gross earnings representing service within the City.

(C) Where the work of such an employee is preponderantly outside the City, the employee shall not be deemed to be engaged in a service within the City.

(D) Officers and supervisory personnel whose headquarters are within the City and whose occupations regularly require part of the work to be done outside the City shall be allowed to prorate the compensation on which a license is due for that part of the work done within the City. There shall be no proration of compensation for employees headquartered within the City where travel is only incidentally connected with the occupation. Individual cases of claimed exemption under this division shall be subject to review by the Finance Officer.

(E) No license fee shall be due on compensation of railroad employees for sick leave.

(F) The fact that any particular railroad employee affected by the foregoing regulations may be engaged in interstate commerce is not relevant in determining the subjectability of compensation received by him.

§110.022 MOTOR FREIGHT AND COMMERCIAL TRANSPORTATION OTHER THAN RAILROADS.

Since the circumstances involved in the employment of motor freight and commercial transportation other than railroads are substantially analogous to those of railroad train and engine service employees, the regulations applicable thereto as contained in §110.021 shall apply to employees in the aforementioned category.

§110.023 FEDERAL, STATE, OR MUNICIPAL EMPLOYEES.

(A) Compensation received from the federal government for services performed within any federal reservation situated within the geographical limits of the City, the title to which is in the federal government, is subject income, even though exclusive jurisdiction thereof was granted to the federal government by the state and the City.

(B) Compensation received from state, county, and municipal governmental agencies is subject to the provisions of this chapter.

(C) Refund of tax withheld and paid covering activities outside the City shall be made to the employee upon application on a form provided by the Finance Officer.

§110.024 REAL ESTATE SALES PERSONS AND BROKERS.

(A) Real estate salespersons or brokers who are engaged in business as employees

rather than independent contractors are not required to file a return for the commissions earned by them. The employer is required to deduct the fee from the commissions earned and remit the same to the Finance Officer.

(B) Real estate salespersons or brokers acting as independent contractors are subject to a license fee on their wages, salaries or earnings in accordance with the rules and regulations and definitions of this chapter.

§110.025 TAILORS.

Tailors who receive work to perform in their own shops for a specified amount to be paid for each garment are independent contractors.

§110.026 NURSES.

(A) A registered nurse, except as provided below, is in the same status as any other professional person and is required to file a return upon his gross payroll.

(B) A registered nurse regularly employed by a hospital, institution, business entity, or individual is subject to the withholding provisions of this chapter.

§110.027 EXECUTIVES AND DIRECTORS.

An officer or director of a corporation performing services out of the City, except for occasional visits to a City office to examine correspondence and the like is not subject to the license fee. Where an organization meets in the City, and part of the work required as officer or director of such an organization is done by him in the City, his compensation is subject in the ratio that those duties bear to his total duties.

§110.028 DOMESTIC SERVANTS.

Domestic servants employed in private homes are not subject to the provisions of this chapter. "Domestic Servants" are persons hired to work in or around a private home to perform general household services, which include, but are not limited to nanny services, babysitting, cooking, cleaning, laundering, gardening, yard and maintenance work.

DETERMINING AMOUNT OF LICENSE FEE

§110.040 DETERMINATION OF AMOUNT OF BUSINESS WITHIN CITY.

In determining the proportion or amount of the subject gross receipts of a business entity doing business within the City, the business entity shall use and apply the computation of gross receipts formula set forth in §110.003(B). Provided, however, that if a business has payroll and/or sales revenue in more than one (1) tax district, the provisions of §110.041 apply.

§110.041 COMPUTATION OF GROSS RECEIPTS.

The gross receipts of businesses and professions from activities conducted within and without the City shall be computed as follows:

(A) Multiply the entire gross receipts from all sources by the apportionment percentage as set forth in §110.042; thereafter, multiply the product by the tax rates set forth in §110.003(B).

§110.042 APPORTIONMENT.

(1) Except as provided in subsection (4) of this section, gross receipts shall be apportioned as follows:

(a) For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the gross receipts by a fraction, the numerator of which is the payroll factor, described in subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is two (2); and

(b) For business entities with sales revenue in more than one (1) tax district, by multiplying the gross receipts by the sales factor as set forth in subsection (3) of this section.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the tax district during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the tax district based on the time the individual's service is performed within the tax district.

(3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the tax district during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.

(a) The sale, lease, or rental of tangible personal property is in the tax district if:

1. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the tax district regardless of the f.o.b. point or other conditions of the sale; or

2. The property is shipped from an office, store, warehouse, factory, or other place of storage in the tax district and the purchaser is the United States government.

(b) 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 tax district based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the tax district and the denominator of which is the total time spent

performing that income-producing activity.

(c) Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.

(4) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the tax district, the business entity may petition the tax district or the tax district may require, in respect to all or any part of the business entity's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one (1) or more of the factors;

(c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the tax district; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of gross receipts.

§110.043 COMPUTATON OF FEES FOR NEW BUSINESSES.

(A) Any new businesses opening prior to the 25th of any month shall pay a minimum fee to be set at the rate of \$9 per month, including the month of the opening of the business and each month for the rest of the calendar year as the minimum business license fee. Businesses opening on the 25th day of any month, or later in the month shall pay the rate of \$9 per month for the rest of the calendar year, commencing in the month following the month of the opening of the business. For example, if a business opens on August 24, the minimum license fee will be for five months at the rate of \$9 per month. If the business opened on August 25, the minimum license fee would be calculated on four months at the rate of \$9 per month.

(B) Gross receipts shall continue to be calculated based on gross receipts for the calendar year of each business. For example, if a business opens on August 24, 1991, gross receipts will be calculated from August 24, 1991 through December 31, 1991. The minimum license fee will be credited against the gross receipts, however, no refunds will be paid in the event that the calculation of gross receipts multiplied by .0006 is less than the minimum business privilege tax as established herein. This section does not apply to businesses that have been in existence inside the corporate limits within the past five (5) calendar years that move back into the corporate limits.

PROCEDURE FOR FILING RETURNS; DEDUCTIONS; WITHHOLDING

§110.055 EMPLOYERS TO FURNISH LISTS OF EMPLOYEES.

Every employer shall, on or before January 31 of each year, furnish the Finance Officer a list of employees in such form as the employer may choose, setting forth the following

information in respect to the preceding calendar year: name; address; and gross wages paid. Additionally, each employer or business shall furnish a list of all contract laborers used by the employer or business during the preceding year to the extent that the contractor has been issued a Form W-2 or Form 1099.

§110.056 RETURN AND PAYMENT OF TAX.

(A) Every person or business whose earnings or gross receipts are subject to the license fee imposed by this chapter shall on or before April 15 of each year make and file a return with the Finance Officer. In the return file, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees, and/or compensation received or gross receipts, all as defined in §110.001, by and during the preceding year within the City and subject to the license fee, together with such other pertinent information as the Finance Officer may require.

(B) Where the entire earnings for the year are paid by one and the same employer and the license fee has in each instance been withheld or deducted by the employer from the gross amount of compensation without adjustment for expenses, it is not necessary for such employee to file a return for the year unless required or requested to do so by the Finance Officer.

(C) If the return is made for a fiscal year or for any period other than a calendar year, the return shall be made by the fifteenth day of the fourth month following the close of the fiscal year or other period.

(D) The return shall also show the amount of the license fee imposed by this chapter on such compensation or gross receipts or both.

(E) The person making the return shall, at the time of filing thereof, pay to the Finance Officer the amount of fee shown to be due by the return.

(F) Where any portion of the license fee otherwise due shall have been previously paid or deducted at the source and shall have been paid to the Finance Officer by the person making the deduction, a credit equal to the amount so paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of the filing of the return. The minimum license fee for businesses shall be deducted from any additional amounts due and owing with the final return; provided, however, that all businesses shall owe no less than the minimum amount for that type of business as set forth in this ordinance.

(G) If any business entity dissolves or withdraws from a tax district during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of gross receipts taxes or tax withheld for the period of that taxable year during which the business entity had gross receipts or tax withheld in the tax district.

(H) Persons temporarily engaged in business, as defined in §110.001, within the City, or temporarily performing services within the City, shall file a return and pay the license fee upon the completion of the business or employment.

(I) Each business or other entity engaged in any occupation, trade, profession, or other activity in the City shall pay the applicable minimum license fee as set forth in §110.003, payable in advance to the City for each calendar year or fraction thereof in the case of a new business. All revenue derived under this chapter shall be used for defraying current general and incidental expenses of the City. The minimum fee payable as set forth in §110.003 shall be a credit on the license fee as otherwise provided in this chapter, only for the tax year which the minimum fee covers, and shall not be a credit for any subsequent year.

(J) Each business entity shall also be required to complete and file a list of all insurance providers for said business entity upon a form proscribed and provided by the Finance Officer, or his or her designee. The form shall be a part of and incorporated in the forms as required by other portions of this ordinance, and shall be filed by the due date set forth in §110.056 herein. The penalty for failure to file said form shall be the same as if said business entity failed to make a return pursuant to §110.080(5) herein.

§110.057 APPLICABILITY OF FEDERAL INCOME TAX LAW – BUSINESS ENTITY TO KEEP RECORDS.

(1) For purposes of this ordinance, computations of gross income and deductions therefrom, gross receipts or sales, and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.

(2) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as the tax district from time to time may prescribe. Whenever the tax district deems it necessary, the tax district 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 tax district deems sufficient to determine the tax liability of the business entity.

(3) The tax district 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.

§110.058 Reserved.

§110.059 EMPLOYER TO WITHHOLD TAXES.

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 a tax district. Amounts withheld shall be paid to the City of Franklin in accordance with this

ordinance. The City of Franklin may impose minimum and maximum tax liabilities for the tax on compensation.

§110.060 EMPLOYER TO REPORT TAX WITHHELD – LIABILITY OF EMPLOYER FOR FAILURE TO WITHHOLD OR PAY TAX.

(1) Every employer required to deduct and withhold tax under KRS 67.780 and this ordinance 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 of Franklin the tax required to be withheld under this ordinance, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the City of Franklin.

(2) Every employer who fails to withhold or pay to the City of Franklin any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the City of Franklin for any sum or sums withheld or required to be withheld in accordance with the provisions of §110.059.

(3) The City of Franklin shall have a lien upon all the property of any employer who fails to withhold or pay over to the City of Franklin sums required to be withheld under this ordinance. If the employer withholds, but fails to pay the amounts withheld to the City of Franklin, the lien shall commence as of the date the amounts withheld were required to be paid to the City of Franklin. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the City of Franklin.

(4) Every employer required to deduct and withhold tax under KRS 67.780 and/or this ordinance shall annually on or before February 28 of each year complete and file on a form furnished or approved by the City of Franklin a reconciliation of the tax withheld in each tax district where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information as determined by the tax district shall be submitted.

(5) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and license tax deducted by the employer from the compensation paid to the employee for payment to a tax district during the preceding calendar year.

§110.061 PERSONAL LIABILITY OF OFFICERS OF BUSINESS ENTITY

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

(2) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to §110.059 shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under this ordinance 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 tax district 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. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.

(3) Every employee receiving compensation in the City of Franklin subject to the tax imposed under KRS 68.180, 68.197, 91.200, or 92.281 or this ordinance shall be liable for the tax notwithstanding the provisions of subsections (1) and (2) of this section.

§110.062 USE OF TAX YEAR AND ACCOUNTING METHODS REQUIRED FOR FEDERAL INCOME TAX PURPOSES.

If a business entity makes, or is required to make a federal income tax return, the net profit or gross receipts shall be computed for the purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.

§110.063 WHEN RETURNS TO BE MADE – COPY OF FEDERAL INCOME TAX RETURN TO BE SUBMITTED WITH RETURN.

(1) All business entities' returns for the preceding taxable year shall be made by April 15 in each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns shall be supplied by the City of Franklin.

(2) Every business entity shall submit a copy of its federal income tax return at the time of filing its return with the City of Franklin. Whenever, in the opinion of the City of Franklin, 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 all statements and schedules in support thereof. The City of Franklin may also require copies of reports of adjustments made by the federal government.

§110.064 EXTENSIONS.

(1) The City of Franklin may grant any business entity an extension of not more than six (6) 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 tax, requests the extension and pays the amount properly estimated as its tax.

(2) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (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.

§110.065 LICENSES.

All businesses shall be issued a license upon payment of the minimum fee as required by this ordinance. The license shall be kept in a conspicuous location or be available for inspection by the Finance Officer or his/her designee upon request. There shall be a charge of Five Dollars (\$5.00) per copy for any additional copies of said license requested.

ADMINISTRATION AND ENFORCEMENT

§110.075 DUTIES OF FINANCE OFFICER.

The Finance Officer is required to:

(A) Collect the license fees imposed under this chapter.

(B) Recommend to the City Manager the adoption of such written rules and regulations as he may deem necessary for the proper enforcement of the provisions of this chapter. Any rules and regulations concerning the enforcement of the provisions of this chapter which may be promulgated by the City Manager shall be subject to the approval of the Board of Commissioners in accordance with KRS 83A.150(9).

(C) Receive the license fees imposed under this chapter.

(D) Keep an accurate record showing the amount received by him from each license payer, and withholding employer, and the date of the receipts.

§110.076 REGULATIONS ON FILE AND OPEN TO PUBLIC.

The regulations contained in this chapter, together with all amendments and supplements thereto and all changes therein, shall be on file with the Finance Officer, and shall be open to public inspection. Copies thereof shall, so far as possible, be available to all license payers, employers, and their representatives upon request.

§110.077 AUDITING OF RETURNS – PAYMENT OF ADDITIONAL TAX – FEDERAL AUDIT.

(A) The following are hereby implemented:

(1) As used in this section and §110.079, unless the context requires otherwise:

(a) “Conclusion of the federal audit” means the date that the adjustments made by the Internal Revenue Service to net income or gross receipts as reported on the business entity’s federal income tax return become final and unappealable; and

(b) “Final determination of the federal audit” means the revenue agent’s report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(2) As soon as practicable after each return is received, the City of Franklin may examine and audit it. If the amount of tax computed by the City of Franklin 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 (5) years from the date the return was filed, except as otherwise provided in this subsection.

(a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.

(b) In the case of a return where a business entity understates net profit or gross receipts, or omits an amount properly includable in net profit or gross receipts, or both, which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of net profit or gross receipts stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

(c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the tax district receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this subsection may be extended by agreement between the business entity and the City of Franklin. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

(3) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.

(4) A tax district may initiate a civil action for the collection of any additional tax due within the times prescribed in subsection (2) of this section.

(B) Upon the failure of the licensee to file an audit with the Finance Officer when requested, the Finance Officer personally, or his agents or employees is authorized and empowered to examine the books, papers, and records of any business, employer, or supposed employer, or of any license payer, or supposed license payer, in order to verify the accuracy of any return made; or, if no return was made, to ascertain the license fee imposed by this chapter. The Finance Officer may enforce this right by application to the appropriate court having jurisdiction over these matters.

(C) Every employer or supposed employer and every license payer or supposed license payer is required to furnish to the Finance Officer, or his duly authorized agents and employees, the means, facilities, and opportunity for such examinations, investigation and audits as are authorized in and by this chapter.

(D) The Finance Officer is further authorized to examine under oath any person concerning any income which was or should have been returned for a license fee, and to this end the Finance Officer shall have the right and power to compel the production of books, papers, and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income.

(E) Refusal of any such examination by any employer or persons subject to the license fee, or presumed to be an employer or person subject to the license fee, constitutes a violation of this chapter.

(F) Agents and employees charged with the duty of inspection or auditing of records of employers and license payers shall carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.

§110.078 RECORDS TO BE KEPT BY BUSINESSES AND EMPLOYEES.

Businesses and others subject to the license fee under this chapter are required to keep such records as will enable the filing of true and accurate returns, whether of fees withheld at source, or of fees payable upon earnings or gross receipts, or both. Such records are to be preserved to enable the Finance Officer or any agent or employee of the Finance Officer to verify the correctness of the return filed.

§110.079 CLAIMS FOR REFUND OR CREDIT.

(A) Business Entities.

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of any tax subject to the provisions of this ordinance.

(2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited, if said refund or credit is warranted, within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the City, whichever is the later, except that:

(a) In any case where the assessment period contained in this ordinance has been extended by an agreement between the business entity and the City of Franklin, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the

time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) 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.

(3) Exclusive authority to refund or credit overpayments of taxes collected by the City is vested in the City.

(B) Individuals/Employees.

(1) Where there has been an overpayment of tax under this ordinance, 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 this ordinance by the employer.

(2) Unless written application for refund or credit is received by the City of Franklin from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed.

(3) An employee who has compensation attributable to activities performed outside the City of Franklin, based on time spent outside the City of Franklin, whose employer has withheld and remitted the occupational license fee on the compensation attributable to activities performed outside the City of Franklin to the City of Franklin, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the City of Franklin 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.

§110.080 PENALTIES – CONFIDENTIALITY OF INFORMATION FILED WITH THE CITY OF FRANKLIN.

(1) A business entity subject to tax on gross receipts may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:

(a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the City of Franklin; or

(b) 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 subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(2) Every employer who fails to file a return or pay the tax on or before the date prescribed under this ordinance may be subject to a penalty in an amount equal to five percent

(5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(3) 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 twelve percent (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 of Franklin. A fraction of a month is counted as an entire month.

(4) Every tax subject to the provisions of this ordinance, 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 of Franklin.

(5) In addition to the penalties prescribed in this section, any 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.

(6) 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 ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

(7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the City and required to be filed with the City by the provisions of this ordinance, or by the rules of the City or by written request for information to the business entity by the City.

(8)(a) No present or former employee of any tax district 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 tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax laws or in any action challenging a tax district tax laws.

(b) Any person who violates the provisions of paragraph (a) of this subsection by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or

both.

(c) Any person who violates the provisions of paragraph (a) of this subsection by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.

§110.081 Reserved.

§110.082 FEES CREDITED TO GENERAL FUND.

All monies derived from license fees under the provisions of this chapter shall be paid to the Finance Officer and placed to the credit of the general revenue fund of the City and shall be used and expended in defraying current general and incidental expenses of the City, including the retirement of debt. It is the purpose of this chapter to provide revenue for the general fund and it is not the intention of the City or this ordinance to impose and to require an occupational license fee prohibited by law.

§110.083 Reserved.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holdings shall not affect the validity of the remaining portions of Ordinance.

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

_____ FIRST READING

_____ SECOND READING

At a meeting of the City Commission of the City of Franklin, Kentucky, held on _____, on motion made by _____ and seconded by _____, the foregoing ordinance was adopted, after full discussion, by the following vote:

_____ HERBERT WILLIAMS

_____ BILL AUSTIN

_____ WENDELL STEWART

_____ HENRY STONE

_____ JIM BROWN, MAYOR

APPROVED BY:

JIM BROWN, MAYOR

ATTEST:

KATHY STRADTNER, CITY CLERK
CITY OF FRANKLIN, KENTUCKY

CITY/ORDINANCES/AMENDED OCCUPATIONAL LICENSE TAX ORD[1] with accepted changes.DOC