

ORDINANCE NO. 62, 2013

AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY, AMENDING SECTIONS 2, 3 AND 4 OF ORDINANCE NO. 155, SERIES OF 2007, WHICH CREATED AN OCCUPATIONAL LICENSE FEE CHANGING THE OCCUPATIONAL LICENSE FEE/NET PROFIT RATE FROM 1.5% TO 2%.

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BE IT ORDAINED BY THE CITY OF ASHLAND, KENTUCKY:

SECTION 1. That Sections 2, 3 and 4 of Ordinance No. 155, Series of 2007, being an ordinance entitled, "AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY, REPEALING ORDINANCE NO. 84, SERIES OF 2004, AND CREATING AN OCCUPATIONAL LICENSE FEE TO BE CHARGED TO THOSE PARTIES WHO PRACTICE A BUSINESS, TRADE OR PROFESSION WITHIN ASHLAND'S CORPORATE LIMITS, INCLUDING EMPLOYEES; SETTING THE FEE TO BE CHARGED; IDENTIFYING THE COMPENSATION WHICH IS SUBJECT TO THE FEE; ESTABLISHING WITHHOLDING; FILING AND PAYMENT RESPONSIBILITY; PROVIDING FOR A NET PROFIT FEE WITH PAYMENT AND REPORTING RESPONSIBILITY FOR BUSINESSES; SETTING FORTH ENFORCEMENT PROVISIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS FILED WITH THE CITY; AND CREATING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE," be and said sections are hereby amended as follows, such amendments shown by underscoring all newly inserted language and by a single broken line through all deleted language:

SECTION 2. LEVY OF LICENSE FEE - GENERAL. There is hereby levied and imposed an annual license fee upon all persons, associations, corporations or other entities engaged in any occupation, trade, profession or other activity 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 ~~1.5~~ 2.0 percent of all subject salaries, wages, commissions and other compensation, earned by every person in the city for work done or services performed or rendered in the city regardless of where payment is made or received; and of the net profits of all businesses, professions or occupations from activities conducted in the city.

### SECTION 3. EMPLOYEES

(A) EMPLOYEES IN GENERAL. The license fee is imposed on both residents and nonresidents of the city at the rate of ~~1.5~~ 2.0 percent of all subject salaries, wages, commissions and other compensation earned for work done or services performed or rendered in the city. The following are subject to the license fee:

(1) Salaries, wages, commissions, bonuses, incentive payments, and other compensation received by an individual, whether directly or indirectly through an agent and whether in cash or in property, for services rendered:

a. As an officer, director, agent or employee, or both, of a corporation (including a corporation of the first or nonprofit class), joint stock association or joint stock company;

b. As an officer, agent or employee (as distinguished from a partner or member) of a partnership, limited partnership or any other form of unincorporated enterprise owned by one (1) or more persons;

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

d. As an officer, agent or employee (whether elected or appointed, enlisted or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit thereof.

e. As an officer, agent or employee of any other entity.

(2) Salaries, wages, bonuses, incentive payments, and other compensation received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

a. Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece-work rates; and

b. Whether paid by an individual, partnership, association, corporation (including a corporation of the first or nonprofit class), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit, or any other entity.

(3) Commissions received by an employee, whether directly or through an agent, and whether in cash or in property, for services rendered, regardless of how computed or by whom paid. If such commissions are included in the net earnings of a trade, business or profession regularly carried on by such individual and, therefore, subject to license fees under section 4, they shall not again be separately taxed.

(4) Fees and other earned income, unless such fees are properly included as part of the net profits of a trade, business, profession or enterprise regularly carried on by the individual and such net profits are subject to tax under section 4. Compensation paid to a director or officer of a corporation are subject to withholding under this article as in the case of any other employee.

(5) Other compensation will be treated as follows:

a. SUBJECT TO THE LICENSE FEE:

(i) Tips received by waiters and others: Tips received are subject to the license fee and will be reported in the same manner as regular earnings.

(ii) Vacation, holiday and/or sick benefits: Payments made to employees by an employer as vacation, holiday and/or sick payments are subject.

(iii) Separation payments: Payments made to employees by an employer at the time of a voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the license fee.

(iv) Employee contributions 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.

(v) Employee contributions 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.

(vi) Property and Services Received as Compensation: The fair market value of property or services received as compensation by an employee and paid by the employer including board and lodging and similar items where such board and lodging is considered part of the compensation paid and is not afforded for the convenience of the employer.

(vii) Other Income: All other income paid by an employer and received by an employee for the performance of any activity subject to the license fee, not expressly exempt (see below) unless such income is to be reported and a net profit license fee paid thereon under the provisions of these regulations.

b. NOT SUBJECT TO THE LICENSE FEE:

(i) Retirement payments: 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.

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

(iii) Death benefits: Death benefits payable by an employer to the beneficiary of an employee or to the employee's estate, whether payable in a single sum or otherwise, are not subject to the license fee.

(iv) Benefits arising under the workers' compensation act: Amounts received by employees under the workers' compensation act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability, are not subject to the license fee.

(v) Allowances and Reimbursement for Expenses: Reasonable sums allowed and paid by employers to employees for expenses necessarily and actually incurred by the employee in the direct performance of his services.

(vi) Strike Benefits: Strike pay benefits paid from a fund which is established and/or replenished, in whole or in part, from the employee's wages.

(vii) Kentucky National Guard: Compensation paid members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training.

(viii) Employer Contributions to Qualified Plans Not Arising From Employee Election.

(ix) Employer Payments for Employee Benefits: Employer's payments for employee's life insurance premiums not treated as wages for Federal Income Tax purposes, employer's payments for employee's health insurance benefits.

(x) Student Grants: Stipends, honorariums, grants and other payments made to students to the extent that such payments are conditioned only upon the recipient's pursuit of studies and/or participation in athletic or other intercollegiate competition, and scholarships and other noncash fringe benefits received by duly registered students from the school, college or university in which they are enrolled.

(xi) Payments to Nonresident Military Personnel: Payments to nonresident military personnel exempt from state and location taxation under the Soldiers and Sailors Federal Relief Act (50 USCA 574).

(xii) Compensation to individual domestic workers or care providers.

(xiii) Compensation to individuals with single newspaper routes.

c. APPLICABILITY OF THE FOREGOING TO EMPLOYEES WHOSE  
COMPENSATION IS NOT WHOLLY SUBJECT:

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, they are subject to the license fee in the same proportion that services performed within the city bear to their total employment time.

(B) WITHHOLDING OF LICENSE FEE.

(1) It is the duty of each employer who employs one (1) or more persons on a salary, wage, commission or other compensation basis, to deduct, at the time of the payment of such compensation, the license fee on such salary, wage, bonus, incentive payment, commission or other compensation due by the employer to the employee. The license fee shall be deducted by the employer from all compensation paid to employees for activities in the city.

However, the mere fact that the license fee is not withheld will not relieve the employee of the responsibility of filing a return and paying the fee on the compensation received. A nonresident employer, either maintaining in the city an office, business address, or doing business therein, or who is otherwise subject to service of legal process, is subject to the withholding provisions of this ordinance.

(2) Where an individual receives compensation for personal services rendered or performed partly within and partly outside the city, the withholding agent shall deduct and withhold that portion of the compensation which is earned within the city in accordance with the following rules of apportionment:

a. If the individual is a traveling salesperson, agent or other employee, whose compensation on the basis of commissions depends directly on the volume of business transacted by the individual, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the city bears to the volume of business transacted by the employee both within and outside of the city. There shall be no proration of compensation for employees headquartered within the City where travel is only incidentally connected with the occupation.

b. The deducting and withholding of personal service compensation of all other employees, including officers of corporations, shall attach to the portion of the personal service compensation of such employee which the total number of hours employed within the city bears to the total number of hours employed both within and outside the city.

c. If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the usual basis of compensation, apportionment shall be made in accordance with the facts, and the fee deducted and withheld accordingly. With respect to each such employee or group of employees similarly or identically circumstanced, the employer shall furnish the Finance Director a detailed statement of facts.

d. The occasional entry into the city of an employee, who performs the duties for which the employee is employed entirely outside the city, but enters the city for the purposes of reporting, receiving instructions, accounting, etc., incidental to the employee's duties outside the city shall not be deemed to take such employee out of the class of those rendering their services entirely outside the city.

(C) RETURNS OF LICENSE FEE AND PAYMENT.

(1) The return and payment required to be made on account of deductions by employers from salaries, wages and other compensation of employees shall be made on the last day of the month following the end of the calendar quarter.

(2) a. If the last day of the month following the end of the calendar quarter falls on a Saturday, Sunday or legal holiday, the return and payment shall be made on the next regularly scheduled working day. If the envelope bearing the return(s) is postmarked on or before the due date, late filing penalties will not apply. The employer shall report for the quarterly periods ending March 31, June 30, September 30, and December 31 of each year the wages from which license fees have been so withheld, and shall make the payment required to be made on account of the employee withholding of occupational license fees on or before the time required for the filing of the quarterly returns.

b. Notwithstanding the provisions of division (A) of this section, each employer who employs persons within the city for which the aggregate city, occupational license fees required to be withheld from all employee wages for any one of the preceding four quarters shall have exceeded the sum of \$3,000 shall remit the occupational license fees required to be withheld from employees monthly on or before the last day of the month following the month in which the wages shall have been paid by the employer, or (in the case of deferred compensation subject to the license fees imposed hereunder) on the last day of the month following the month in which the compensation is deemed to have been earned by the employee.

(3) The returns required to be filed under this ordinance shall be made on forms prescribed by and obtainable from the Occupational License/Net Profit Division and/or the Finance Director.

(4) On or before February 28 of each year, each employer shall file with the Finance Director on the form prescribed by and obtainable from the Occupational License/Net Profit Division and/or the Finance Director an annual information return listing each employee from whom the license fee has been withheld, showing the employees name, Federal ID number (Social Security Number), total annual compensation, total annual compensation subject to the license fee and the amount of license fee withheld from each employee during the preceding calendar year.

- (5) The annual information return shall include a copy of form W-2 for each employee.
- (6) The gross compensation to be reported for each employee should be for the full twelve (12) calendar months of the year, or such portion thereof as the employee reported on was employed.
- (7) The failure of any employer, either residing within or outside of the city, to collect the license fee and to make such return shall not relieve the employee from the payment of such fee in compliance with these regulations respecting the making of returns and the payment of license fees.
- (8) Every employer is deemed to be a trustee of the city in collecting and holding the license fee required under this article to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every such employer required to deduct and withhold the license fee at the source is liable directly to the city for the payment of such fee whether actually collected by such employer or not.
- (9) Every employer is required to submit a copy of Forms 1096 and the respective Form 1099s to reflect monies paid to contract labor, subcontractors, etc.
- (10) An individual employee subject to the fee shall file his or her return on or before April 15<sup>th</sup> of each year for the previous year's wages/compensation on the forms prescribed by the City and obtainable from the Occupational License/Net Profit Division and/or the Finance Director.

#### SECTION 4. NET BUSINESS PROFIT

(A) GENERAL. In the case of an individual, partnership, association, corporation, fiduciary or other entity engaged in the conduct, operation or prosecution of any business, profession or other enterprise, there is imposed an annual license fee being the greater of One Hundred Dollars (\$100.00) or ~~1.5~~ 2.0 percent of the net profits of such business, profession or other enterprise, if and to the extent conducted in or derived from activity in the city, whichever is greater. In determining the proportion or amount of the subject net profits of a business entity doing business within and without the city, such business entity shall use and apply a business allocation percentage formula computed on the basis of business receipts within and outside the city and payrolls within and outside the city. "Business receipts" means the sum total of gross receipts from sales plus gross credit or charges for work done and performed or services rendered. "Payrolls" means the total wages, salaries and other personal service compensation.

(1) Determination of fee: After determining such business allocation percentage, the license fee shall be determined by applying that percentage to the entire net profits of the license payer wherever derived, thus arriving at the subject net profit, and computing ~~1.5~~ 2.0 percent of the resultant subject net profit.

(2) Fee adjustment: Should it appear to the Occupational License/Net Profit Division and/or the Director of Finance that any agreement, understanding or arrangement exists between the license payer and any other person whereby the activity, business, income or capital of the license payer is improperly or inaccurately reflected, the Finance Director may adjust items of income, deductions and capital in computing any allocation percentage, provided any income directly traceable thereto is also excluded from entire net income, so as equitably to determine the license fee.

(3) Explanation of business receipts factor: The percentage of the license payer's business receipts within the city is determined by ascertaining the taxpayer's business receipts within the city during the period covered by the report and dividing the sum of such business receipts by the license payer's total business receipts within and without the city during such period. Receipts from the following are allocable to the city:

a. Sales of the licensee's tangible personal property delivered to the buyer within the corporate limits of the city.

b. Work done and performed or services rendered in the city.

c. Rentals from property situated in the city where the rental of such property is a business activity.

d. All other business receipts earned in the city. All receipts of the period covered by the report (computed on the cash or accrual basis, in accordance with the method of accounting used in the computation of the license payer's entire net income) must be taken into account.

e. Business Allocation Factor equals "receipts inside city" divided by "total receipts."

$$\text{FACTOR} = \frac{\text{RECEIPTS INSIDE CITY}}{\text{TOTAL RECEIPTS}}$$

(4) Compensation for work done and performed or services rendered:

a. The term "compensation" may include not only payment in cash or property but also the gross credits to or charges by the licensee, under its normal and usual accounting practices, for the performance of work or services. For example, a plant, factory or other establishment in the city which processes material or manufactures parts for other plants or factories owned by the licensee, and which may receive credit for the performance of such services only by bookkeeping entries, may be chargeable under this ordinance with the gross amount of such entries in applying the formula discussed hereunder. Furthermore, such bookkeeping entries may be considered in lieu of cash or property payment in determining the net profits of any license payer under this article, even though the business allocation percentage formula may not be used by or be applicable to the licensee. However, whenever such gross credits or charges are included in computing the net profits of any licensee who pays a license fee thereon under this ordinance, the same licensee shall not be twice subject in the same fee period by the separate imposition of a fee upon such gross credits or charges.

b. Compensation and other receipts from work done or services performed within the city are allocable to the city and subject under this ordinance. All amounts so received credited or charged by a licensee in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of the licensee, by subcontractors or by any other persons. It is immaterial where such amounts were payable or where they were received. Commissions or fees received by the licensee are allocated to the city if the services for which the commissions were paid were performed in the city. If the license payer's services for which commissions or fees were paid were performed for the license payer by sales persons or other agents or employees attached to or working out of the city place of business of the licensee, the licensee's services will be deemed to have been performed in the city. Where a lump sum is received by the licensee in payment for services within and outside the city, the amount attributable to services within the city is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and outside the city, or by some other reasonable method approved by the Finance Director. Full details must be submitted with the licensee's report.

c. All business receipts earned by the city licensee within the city are allocable to the city. Business receipts are not considered to have been earned by the licensee in the city solely by reason of the fact that they were payable in or actually received in the city. Receipts for sales of capital assets (property not held by the licensee for sale to customers in the regular course of business) are not business receipts. Receipts from the sale of real property held by the licensee as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the city if the real property was situated in the city. Receipts from sales of intangibles included in business capital, held by the licensee as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to the city if the sales were made in the city or through a regular place of business of the licensee in the city.

(5) Payroll factor:

a. The percentage of the license payer's payroll allocable to the city is determined by dividing the wages, salaries and other personal service compensation of the licensee's employees within the city during the period covered by the report by the total amount of compensation of all the licensee's employees during such period. Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the licensee.

b. Employees within the city include all employees regularly connected with a place of business maintained by the licensee in the city. Wherever it appears that the licensee's payroll was paid to employees attached to places of business outside the city who performed services within the city, the payroll factor is to be computed by deriving the percentage which the licensee's payroll paid in the city bears to his total payroll. In any such case, where an employee performed services both within and without the city, the amount treated as compensation for services performed within the city shall be deemed to be:

(i) In the case of an employee whose compensation depends directly on the volume of business secured by that employee, such as a salesperson on a commission basis, the amount received by that employee for the business attributable to the employee's efforts within the city;

(ii) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of the employee's services within the city bears to the value of all the employee's services; and

(iii) In the case of an employee compensated on a time basis, the proportion of the total amount received by the employee which the working time employed in the city bears to the total working time.

(iv) The accounting method used to compute net profits subject to the license fee shall be the same as the method used to compute net income for federal income tax purposes, excluding all taxes based on net income, license fees imposed under this ordinance and the net operating loss carry-forward or carry-back used to reduce net income for the current year.

(B) APPLICATION PROCESS: An Application for Business Privilege can be obtained from the Occupational License/Net Profit Division. Every person desiring to conduct business in the City of Ashland shall fully comply with the following:

(i) A completed Application shall be submitted to the Occupational License/Net Profit Division with the required fee.

(ii) The Application shall be forwarded to the Fire Inspector, Code Official, and Zoning Office. Each vendor with a physical location in the City of Ashland must meet all requirements of the City Zoning Ordinance and Building Code and are subject to inspection from the City of Ashland Code Enforcement Division and the City Fire Inspector. Business locations that fail to meet the zoning requirements and fire regulations could be subject to fines and possible closure until such zoning and safety issues are resolved.

There shall be a fee of \$10.00 for each additional business location. All information regarding the new location shall be supplied to the Occupational License/Net Profit Division and any required inspections shall be performed prior to the opening of the additional location.

There shall be an additional fee of \$50.00 for businesses that open and conduct business prior to obtaining a business license. The business shall still be subject to inspections by the Fire Inspector, Code Official and License Administrator. Pursuant to guidelines contained in Ordinance No. 70, 2003 citations may be issued to appear before the Code Enforcement Board, which could result in fines, closure, or any combination thereof.

(B) BUSINESS LICENSE FEES: Every person conducting a business as defined in this article shall obtain a license from the license fee division before commencement of such business, the fee for which shall be One Hundred Dollars (\$100.00) per year. The license fee shall be prorated as follows for the first year of business:

January 1 <sup>st</sup>	\$100.00
April 1 <sup>st</sup>	\$ 75.00
July 1 <sup>st</sup>	\$ 50.00
October 1 <sup>st</sup>	\$ 25.00

This fee will be credited in full to the account of the license payer and applied against the annual net business profit fee.

A late fee of \$25 shall be applied to those businesses failing to renew their license within thirty (30) days of the expiration date.

Every entity conducting business within the city must file with the Occupational License/Net Profit Division a statement of estimated net profits to be earned during the accounting year prior to issuance of the license. Upon the filing, the entity shall pay one-fourth (1/4) of any license fees estimated to be due. Thereafter, at the end of each month succeeding each calendar quarter each licensee shall pay to the city one-fourth (1/4) of said estimated license fees due.

(C) TEMPORARY LICENSES: Every person conducting business on a temporary basis will be subject to a license fee in the amount of \$10.00 per day for a period not to exceed five (5) days per event. Temporary license applications may be obtained from the Occupational License/Net Profit Division.

Temporary licenses shall be issued to businesses participating in special city events, festivals and other activities as approved by the Board of Commissioners. Vendors who propose to operate beyond the five (5) day limit shall be subject to the minimum annual fee as required in Section 4 (B) of this Ordinance.

Persons/businesses soliciting door to door on a temporary basis shall be required to purchase a regular city license and shall be required to notify the Ashland Police Department and the Occupational License/Net Profit Division of the type of solicitation along with the name of each individual participating in the door to door solicitation. Vendors desiring to acquire a temporary license to sell or solicit business from temporary structures, carts, tables, sheds, or vehicles on private property or City right-of-way or streets are required to obtain approval prior to the commencement of business from the Board of City Commissioners.

Vendors participating in special events at the mall or other business locations may be approved by the Occupational License/Net Profit Division if obtained prior to the event.

Food and lunch vendors, ice cream trucks, approved vehicles that regularly sell food goods from their vehicles which have been duly licensed to operate within the City and have State Health Department approval shall not be considered temporary vendors and shall comply with the provisions in Section 4(C) of this Ordinance. Lemonade and refreshment stands operated by neighborhood children are exempted from this Section.

SECTION 2. Should any section, subsection, sentence, clause or phrase of this ordinance be held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect any other portion of this ordinance, it being the intention of the Board of Commissioners to enact this ordinance section by section, subsection by subsection, and all sentences, clauses or phrases hereof independently of any other section, subsection, clause or phrase.

SECTION 3. All ordinances and parts of ordinances in conflict herewith, to the extent of such conflict only, are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after its adoption, readoption and publication, as required by law.

  
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MAYOR

ATTEST:

  
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CITY CLERK

ADOPTED BY THE BOARD OF COMMISSIONERS:  
READOPTED BY THE BOARD OF COMMISSIONERS:  
PUBLISHED:

JUN 06 2013  
JUN 12 2013  
\_\_\_\_\_

REQUESTED/SPONSORED BY: TONY GRUBB, FINANCE DIRECTOR

G:\ordinance\Payroll Tax July 2013 Amendment

**ORDINANCE NO. 155, 2007**

AN ORDINANCE OF THE CITY OF ASHLAND, KENTUCKY, REPEALING ORDINANCE NO. 84, SERIES OF 2004, AND CREATING AN OCCUPATIONAL LICENSE FEE TO BE CHARGED TO THOSE PARTIES WHO PRACTICE A BUSINESS, TRADE OR PROFESSION WITHIN ASHLAND'S CORPORATE LIMITS, INCLUDING EMPLOYEES; SETTING THE FEE TO BE CHARGED; IDENTIFYING THE COMPENSATION WHICH IS SUBJECT TO THE FEE; ESTABLISHING WITHHOLDING; FILING AND PAYMENT RESPONSIBILITY; PROVIDING FOR A NET PROFIT FEE WITH PAYMENT AND REPORTING RESPONSIBILITY FOR BUSINESSES; SETTING FORTH ENFORCEMENT PROVISIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS FILED WITH THE CITY; AND CREATING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE.

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BE IT ORDAINED BY THE CITY OF ASHLAND, KENTUCKY:

SECTION 1. DEFINITIONS. The following words, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

“CORPORATION”. A corporation or joint stock association organized under the laws of the United States, the State of Kentucky, or any other state, territory or foreign country or dependents.

“EMPLOYEE”. Any person who renders services to another for a financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter, and shall include temporary, provisional, casual or part-time employment.

“EMPLOYER”. An individual, partnership, association, corporation, governmental body or unit or administration or agency, or any other entity, who as that employer has one (1) or more persons on a salary, wage, commission or other compensation basis, regardless of whether such employer is engaged in business or is excluded by the terms of that definition.

“NET PROFIT”. The net income from the operation of a business or enterprise after provision for all costs or expenses incurred in the conduct thereof and shall be the same as reported for federal income tax purposes, excluding items exempted under this ordinance but without deduction of taxes based on income or the license fee imposed under this article or any operating loss carry-over or carry-back.

“NONPROFIT ORGANIZATIONS”. Trade association, union, chamber of commerce, board of trade or corporation or association 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 or income or receipts of such units, groups or associations inures to the benefit of any private shareholder or individual.

“NONRESIDENT”. An individual, partnership, fiduciary, association, corporation or other entity domiciled outside the corporate limits of the city.

“RESIDENT”. An individual, partnership, association, corporation or other entity domiciled or having a business situs within the corporate limits of the city.

“SALES”. Net sales of merchandise or of services, or of both, computed by whatever method of accounting is authorized for federal income tax purposes.

“SALES WITHIN THE CITY”. Includes sales of merchandise delivered to a customer within the city or services performed within the city for a customer.

**SECTION 2. LEVY OF LICENSE FEE - GENERAL.** There is hereby levied and imposed an annual license fee upon all persons, associations, corporations or other entities engaged in any occupation, trade, profession or other activity 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 1.5 percent of all subject salaries, wages, commissions and other compensation, earned by every person in the city for work done or services performed or rendered in the city regardless of where payment is made or received; and of the net profits of all businesses, professions or occupations from activities conducted in the city.

### **SECTION 3. EMPLOYEES**

(A) **EMPLOYEES IN GENERAL.** The license fee is imposed on both residents and nonresidents of the city at the rate of 1.5 percent of all subject salaries, wages, commissions and other compensation earned for work done or services performed or rendered in the city. The following are subject to the license fee:

(1) Salaries, wages, commissions, bonuses, incentive payments, and other compensation received by an individual, whether directly or indirectly through an agent and whether in cash or in property, for services rendered:

a. As an officer, director, agent or employee, or both, of a corporation (including a corporation of the first or nonprofit class), joint stock association or joint stock company;

b. As an officer, agent or employee (as distinguished from a partner or member) of a partnership, limited partnership or any other form of unincorporated enterprise owned by one (1) or more persons;

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

d. As an officer, agent or employee (whether elected or appointed, enlisted or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit thereof.

e. As an officer, agent or employee of any other entity.

(2) Salaries, wages, bonuses, incentive payments, and other compensation received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

a. Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece-work rates; and

b. Whether paid by an individual, partnership, association, corporation (including a corporation of the first or nonprofit class), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit, or any other entity.

(3) Commissions received by an employee, whether directly or through an agent, and whether in cash or in property, for services rendered, regardless of how computed or by whom paid. If such commissions are included in the net earnings of a trade, business or profession regularly carried on by such individual and, therefore, subject to license fees under section 4, they shall not again be separately taxed.

(4) Fees and other earned income, unless such fees are properly included as part of the nets profits of a trade, business, profession or enterprise regularly carried on by the individual and such net profits are subject to tax under section 4. Compensation paid to a director or officer of a corporation are subject to withholding under this article as in the case of any other employee.

(5) Other compensation will be treated as follows:

a. **SUBJECT TO THE LICENSE FEE:**

(i) Tips received by waiters and others: Tips received are subject to the license fee and will be reported in the same manner as regular earnings.

(ii) Vacation, holiday and/or sick benefits: Payments made to employees by an employer as vacation, holiday and/or sick payments are subject.

(iii) Separation payments: Payments made to employees by an employer at the time of a voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the license fee.

(iv) Employee contributions 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.

(v) Employee contributions 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.

(vi) **Property and Services Received as Compensation:** The fair market value of property or services received as compensation by an employee and paid by the employer including board and lodging and similar items where such board and lodging is considered part of the compensation paid and is not afforded for the convenience of the employer.

(vii) **Other Income:** All other income paid by an employer and received by an employee for the performance of any activity subject to the license fee, not expressly exempt (see below) unless such income is to be reported and a net profit license fee paid thereon under the provisions of these regulations.

b. **NOT SUBJECT TO THE LICENSE FEE:**

(i) Retirement payments: 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.

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

(iii) Death benefits: Death benefits payable by an employer to the beneficiary of an employee or to the employee's estate, whether payable in a single sum or otherwise, are not subject to the license fee.

(iv) Benefits arising under the workers' compensation act: Amounts received by employees under the workers' compensation act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability, are not subject to the license fee.

(v) Allowances and Reimbursement for Expenses: Reasonable sums allowed and paid by employers to employees for expenses necessarily and actually incurred by the employee in the direct performance of his services.

(vi) Strike Benefits: Strike pay benefits paid from a fund which is established and/or replenished, in whole or in part, from the employee's wages.

(vii) Kentucky National Guard: Compensation paid members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training.

(viii) Employer Contributions to Qualified Plans Not Arising From Employee Election.

(ix) Employer Payments for Employee Benefits: Employer's payments for employee's life insurance premiums not treated as wages for Federal Income Tax purposes, employer's payments for employee's health insurance benefits.

(x) Student Grants: Stipends, honorariums, grants and other payments made to students to the extent that such payments are conditioned only upon the recipient's pursuit of studies and/or participation in athletic or other intercollegiate competition, and scholarships and other noncash fringe benefits received by duly registered students from the school, college or university in which they are enrolled.

(xi) Payments to Nonresident Military Personnel: Payments to nonresident military personnel exempt from state and location taxation under the Soldiers and Sailors Federal Relief Act (50 USCA 574).

(xii) Compensation to individual domestic workers or care providers.

(xiii) Compensation to individuals with single newspaper routes.

c. **APPLICABILITY OF THE FOREGOING TO EMPLOYEES WHOSE COMPENSATION IS NOT WHOLLY SUBJECT:**

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, they are subject to the license fee in the same proportion that services performed within the city bear to their total employment time.

**(B) WITHHOLDING OF LICENSE FEE.**

(1) It is the duty of each employer who employs one (1) or more persons on a salary, wage, commission or other compensation basis, to deduct, at the time of the payment of such compensation, the license fee on such salary, wage, bonus, incentive payment, commission or other compensation due by the employer to the employee. The license fee shall be deducted by the employer from all compensation paid to employees for activities in the city.

However, the mere fact that the license fee is not withheld will not relieve the employee of the responsibility of filing a return and paying the fee on the compensation received. A nonresident employer, either maintaining in the city an office, business address, or doing

business therein, or who is otherwise subject to service of legal process, is subject to the withholding provisions of this ordinance.

(2) Where an individual receives compensation for personal services rendered or performed partly within and partly outside the city, the withholding agent shall deduct and withhold that portion of the compensation which is earned within the city in accordance with the following rules of apportionment:

a. If the individual is a traveling salesperson, agent or other employee, whose compensation on the basis of commissions depends directly on the volume of business transacted by the individual, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the city bears to the volume of business transacted by the employee both within and outside of the city. There shall be no proration of compensation for employees headquartered within the City where travel is only incidentally connected with the occupation.

b. The deducting and withholding of personal service compensation of all other employees, including officers of corporations, shall attach to the portion of the personal service compensation of such employee which the total number of hours employed within the city bears to the total number of hours employed both within and outside the city.

c. If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the usual basis of compensation, apportionment shall be made in accordance with the facts, and the fee deducted and withheld accordingly. With respect to each such employee or group of employees similarly or identically circumstanced, the employer shall furnish the Finance Director a detailed statement of facts.

d. The occasional entry into the city of an employee, who performs the duties for which the employee is employed entirely outside the city, but enters the city for the purposes of reporting, receiving instructions, accounting, etc., incidental to the employee's duties outside the city shall not be deemed to take such employee out of the class of those rendering their services entirely outside the city.

(C) RETURNS OF LICENSE FEE AND PAYMENT.

(1) The return and payment required to be made on account of deductions by employers from salaries, wages and other compensation of employees shall be made on the last day of the month following the end of the calendar quarter.

(2) a. If the last day of the month following the end of the calendar quarter falls on a Saturday, Sunday or legal holiday, the return and payment shall be made on the next regularly scheduled working day. If the envelope bearing the return(s) is postmarked on or before the due date, late filing penalties will not apply. The employer shall report for the quarterly periods ending March 31, June 30, September 30, and December 31 of each year the wages from which license fees have been so withheld, and shall make the payment required to be made on account of the employee withholding of occupational license fees on or before the time required for the filing of the quarterly returns.

b. Notwithstanding the provisions of division (A) of this section, each employer who employs persons within the city for which the aggregate city, occupational license fees required to be withheld from all employee wages for any one of the preceding four quarters shall have exceeded the sum of \$3,000 shall remit the occupational license fees required to be withheld from employees monthly on or before the last day of the month following the month in which the wages shall have been paid by the employer, or (in the case of deferred compensation subject to

the license fees imposed hereunder) on the last day of the month following the month in which the compensation is deemed to have been earned by the employee.

(3) The returns required to be filed under this ordinance shall be made on forms prescribed by and obtainable from the Occupational License/Net Profit Division and/or the Finance Director.

(4) On or before February 28 of each year, each employer shall file with the Finance Director on the form prescribed by and obtainable from the Occupational License/Net Profit Division and/or the Finance Director an annual information return listing each employee from whom the license fee has been withheld, showing the employees name, Federal ID number (Social Security Number), total annual compensation, total annual compensation subject to the license fee and the amount of license fee withheld from each employee during the preceding calendar year.

(5) The annual information return shall include a copy of form W-2 for each employee.

(6) The gross compensation to be reported for each employee should be for the full twelve (12) calendar months of the year, or such portion thereof as the employee reported on was employed.

(7) The failure of any employer, either residing within or outside of the city, to collect the license fee and to make such return shall not relieve the employee from the payment of such fee in compliance with these regulations respecting the making of returns and the payment of license fees.

(8) Every employer is deemed to be a trustee of the city in collecting and holding the license fee required under this article to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every such employer required to deduct and withhold the license fee at the source is liable directly to the city for the payment of such fee whether actually collected by such employer or not.

(9) Every employer is required to submit a copy of Forms 1096 and the respective Form 1099s to reflect monies paid to contract labor, subcontractors, etc.

(10) An individual employee subject to the fee shall file his or her return on or before April 15<sup>th</sup> of each year for the previous year's wages/compensation on the forms prescribed by the City and obtainable from the Occupational License/Net Profit Division and/or the Finance Director.

#### **SECTION 4. NET BUSINESS PROFIT**

(A) GENERAL. In the case of an individual, partnership, association, corporation, fiduciary or other entity engaged in the conduct, operation or prosecution of any business, profession or other enterprise, there is imposed an annual license fee being the greater of One Hundred Dollars (\$100.00) or 1.5 percent of the net profits of such business, profession or other enterprise, if and to the extent conducted in or derived from activity in the city, whichever is greater. In determining the proportion or amount of the subject net profits of a business entity doing business within and without the city, such business entity shall use and apply a business allocation percentage formula computed on the basis of business receipts within and outside the city and payrolls within and outside the city. "Business receipts" means the sum total of gross receipts from sales plus gross credit or charges for work done and performed or services rendered. "Payrolls" means the total wages, salaries and other personal service compensation.

(1) Determination of fee: After determining such business allocation percentage, the license fee shall be determined by applying that percentage to the entire net profits of the license payer wherever derived, thus arriving at the subject net profit, and computing 1.5 percent of the resultant subject net profit.

(2) Fee adjustment: Should it appear to the Occupational License/Net Profit Division and/or the Director of Finance that any agreement, understanding or arrangement exists between the license payer and any other person whereby the activity, business, income or capital of the license payer is improperly or inaccurately reflected, the Finance Director may adjust items of income, deductions and capital in computing any allocation percentage, provided any income directly traceable thereto is also excluded from entire net income, so as equitably to determine the license fee.

(3) Explanation of business receipts factor: The percentage of the license payer's business receipts within the city is determined by ascertaining the taxpayer's business receipts within the city during the period covered by the report and dividing the sum of such business receipts by the license payer's total business receipts within and without the city during such period. Receipts from the following are allocable to the city:

a. Sales of the licensee's tangible personal property delivered to the buyer within the corporate limits of the city.

b. Work done and performed or services rendered in the city.

c. Rentals from property situated in the city where the rental of such property is a business activity.

d. All other business receipts earned in the city. All receipts of the period covered by the report (computed on the cash or accrual basis, in accordance with the method of accounting used in the computation of the license payer's entire net income) must be taken into account.

e. Business Allocation Factor equals "receipts inside city" divided by "total receipts."

$$\text{FACTOR} = \frac{\text{RECEIPTS INSIDE CITY}}{\text{TOTAL RECEIPTS}}$$

(4) Compensation for work done and performed or services rendered:

a. The term "compensation" may include not only payment in cash or property but also the gross credits to or charges by the licensee, under its normal and usual accounting practices, for the performance of work or services. For example, a plant, factory or other establishment in the city which processes material or manufactures parts for other plants or factories owned by the licensee, and which may receive credit for the performance of such services only by bookkeeping entries, may be chargeable under this ordinance with the gross amount of such entries in applying the formula discussed hereunder. Furthermore, such bookkeeping entries may be considered in lieu of cash or property payment in determining the net profits of any license payer under this article, even though the business allocation percentage formula may not be used by or be applicable to the licensee. However, whenever such gross credits or charges are included in computing the net profits of any licensee who pays a license fee thereon under this ordinance, the same licensee shall not be twice subject in the same fee period by the separate imposition of a fee upon such gross credits or charges.

b. Compensation and other receipts from work done or services performed within the city are allocable to the city and subject under this ordinance. All amounts so received credited or charged by a licensee in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of the licensee, by subcontractors or by any other persons. It is immaterial where such amounts were payable or where they were received. Commissions or fees received by the licensee are allocated to the city if the services for which the commissions were paid were performed in the city. If the license payer's services for which commissions or fees were paid were performed for the license payer by sales persons or other agents or employees attached to or working out of the city place of business of the licensee, the licensee's services will be deemed to have been performed in the city. Where a lump sum is received by the licensee in payment for services within and outside the city, the amount attributable to services within the city is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and outside the city, or by some other reasonable method approved by the Finance Director. Full details must be submitted with the licensee's report.

c. All business receipts earned by the city licensee within the city are allocable to the city. Business receipts are not considered to have been earned by the licensee in the city solely by reason of the fact that they were payable in or actually received in the city. Receipts for sales of capital assets (property not held by the licensee for sale to customers in the regular course of business) are not business receipts. Receipts from the sale of real property held by the licensee as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the city if the real property was situated in the city. Receipts from sales of intangibles included in business capital, held by the licensee as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to the city if the sales were made in the city or through a regular place of business of the licensee in the city.

(5) Payroll factor:

a. The percentage of the license payer's payroll allocable to the city is determined by dividing the wages, salaries and other personal service compensation of the licensee' employees within the city during the period covered by the report by the total amount of compensation of all the licensee's employees during such period. Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the licensee.

b. Employees within the city include all employees regularly connected with a place of business maintained by the licensee in the city. Wherever it appears that the licensee's payroll was paid to employees attached to places of business outside the city who performed services within the city, the payroll factor is to be computed by deriving the percentage which the licensee's payroll paid in the city bears to his total payroll. In any such case, where an employee performed services both within and without the city, the amount treated as compensation for services performed within the city shall be deemed to be:

(i) In the case of an employee whose compensation depends directly on the volume of business secured by that employee, such as a salesperson on a commission basis, the amount received by that employee for the business attributable to the employee's efforts within the city;

(ii) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of the employee's services within the city bears to the value of all the employee's services; and

(iii) In the case of an employee compensated on a time basis, the proportion of the total amount received by the employee which the working time employed in the city bears to the total working time.

(iv) The accounting method used to compute net profits subject to the license fee shall be the same as the method used to compute net income for federal income tax purposes, excluding all taxes based on net income, license fees imposed under this ordinance and the net operating loss carry-forward or carry-back used to reduce net income for the current year.

(B) APPLICATION PROCESS: An Application for Business Privilege can be obtained from the Occupational License/Net Profit Division. Every person desiring to conduct business in the City of Ashland shall fully comply with the following:

(i) A completed Application shall be submitted to the Occupational License/Net Profit Division with the required fee.

(ii) The Application shall be forwarded to the Fire Inspector, Code Official, and Zoning Office. Each vendor with a physical location in the City of Ashland must meet all requirements of the City Zoning Ordinance and Building Code and are subject to inspection from the City of Ashland Code Enforcement Division and the City Fire Inspector. Business locations that fail to meet the zoning requirements and fire regulations could be subject to fines and possible closure until such zoning and safety issues are resolved.

There shall be a fee of \$10.00 for each additional business location. All information regarding the new location shall be supplied to the Occupational License/Net Profit Division and any required inspections shall be performed prior to the opening of the additional location.

There shall be an additional fee of \$50.00 for businesses that open and conduct business prior to obtaining a business license. The business shall still be subject to inspections by the Fire Inspector, Code Official and License Administrator. Pursuant to guidelines contained in Ordinance No. 70, 2003 citations may be issued to appear before the Code Enforcement Board, which could result in fines, closure, or any combination thereof.

(B) BUSINESS LICENSE FEES: Every person conducting a business as defined in this article shall obtain a license from the license fee division before commencement of such business, the fee for which shall be One Hundred Dollars (\$100.00) per year. The license fee shall be pro-rated as follows for the first year of business:

January 1 <sup>st</sup>	\$100.00
April 1 <sup>st</sup>	\$ 75.00
July 1 <sup>st</sup>	\$ 50.00
October 1 <sup>st</sup>	\$ 25.00

This fee will be credited in full to the account of the license payer and applied against the annual net business profit fee.

A late fee of \$25 shall be applied to those businesses failing to renew their license within thirty (30) days of the expiration date.

Every entity conducting business within the city must file with the Occupational License/Net Profit Division a statement of estimated net profits to be earned during the accounting year prior to issuance of the license. Upon the filing, the entity shall pay one-fourth (1/4) of any license fees estimated to be due. Thereafter, at the end of each month succeeding each calendar quarter each licensee shall pay to the city one-fourth (1/4) of said estimated license fees due.

(C) TEMPORARY LICENSES: Every person conducting business on a temporary basis will be subject to a license fee in the amount of \$10.00 per day for a period not to exceed

five (5) days per event. Temporary license applications may be obtained from the Occupational License/Net Profit Division.

Temporary licenses shall be issued to businesses participating in special city events, festivals and other activities as approved by the Board of Commissioners. Vendors who propose to operate beyond the five (5) day limit shall be subject to the minimum annual fee as required in Section 4 (B) of this Ordinance.

Persons/businesses soliciting door to door on a temporary basis shall be required to purchase a regular city license and shall be required to notify the Ashland Police Department and the Occupational License/Net Profit Division of the type of solicitation along with the name of each individual participating in the door to door solicitation. Vendors desiring to acquire a temporary license to sell or solicit business from temporary structures, carts, tables, sheds, or vehicles on private property or City right-of-way or streets are required to obtain approval prior to the commencement of business from the Board of City Commissioners.

Vendors participating in special events at the mall or other business locations may be approved by the Occupational License/Net Profit Division if obtained prior to the event.

Food and lunch vendors, ice cream trucks, approved vehicles that regularly sell food goods from their vehicles which have been duly licensed to operate within the City and have State Health Department approval shall not be considered temporary vendors and shall comply with the provisions in Section 4(C) of this Ordinance. Lemonade and refreshment stands operated by neighborhood children are exempted from this Section.

#### SECTION 5. EXEMPTIONS.

(A) No license under this Ordinance shall be required of domestic workers employed at private homes.

(B) A sale of used goods conducted or participated in by the resident of the residential property on which the sale takes place shall not be considered a business for purposes of this Ordinance unless those sales are conducted for more than four consecutive days or for more than two times a year.

SECTION 6. RETURNS AND PAYMENT OF TAX - GENERAL. Every person whose earnings of net profits are subject to the license fee imposed by this ordinance shall file, by April 15<sup>th</sup>, an annual city return with the Occupational License/Net Profit Division.

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 shall not be necessary for such employee to file a return for the year unless required or requested to do so by the Finance Director.

If the return is made for a fiscal year or for any period other than a calendar year, the return shall be due the 15<sup>th</sup> day of the fourth month following the close of the fiscal year.

The person making the return shall, at the time of filing thereof, pay to the city the amount of the fee shown to be due by the return.

Where any portion of the license fee otherwise due shall have been deducted at the source and shall have been paid to the city 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.

If a licensee shall terminate any business or employment for which the license fee has not withheld, during the calendar or fiscal year, the proper return shall be filed and the tax paid on the last day of the fourth month after the termination of the business or employment.

If the due date of a return falls on a Saturday, Sunday or legal holiday, the return shall be filed on the next regularly scheduled work day. If the envelope bearing the return is postmarked on or before the due date, late filing penalties will not apply.

An executed copy of the licensee's federal income tax return and/or Kentucky state tax return and any other pertinent information as required by the Occupational License/Net Profit Division shall be filed with the annual return.

Requests for refunds will be held if the business is delinquent in the payment of other fees or late in filing returns with the City.

## **MISCELLANEOUS**

### **SECTION 7. SAME - EXTENSION OF TIME FOR FILING RETURNS.**

An extension of time for filing a license fee return may be granted if the licensee notifies the Occupational License/Net Profit Division in writing by the due date for filing the return. The period shall not exceed the time period granted for filing an entity's federal income tax return. A copy of the federal extension request form may be used, provided the licensee's business license number and city business name appear on such request. In no event shall an extension be granted to a business that is delinquent in any previous filings or payment of any fees.

An automatic extension of time for filing the Net Profit License Fee Return does not extend the time of payment of the license fee. Payment of 90% of the estimated license fees must accompany the request for an extension. Merely sending a tentative or estimated payment is not acceptable.

Penalty and interest shall be applied as provided in Section 12. No penalty shall be assessed in those cases in which all filing and payment requirements have in good faith been fulfilled and the final license fee and interest is paid with the filing of the Net Profit.

**SECTION 8. ENFORCING OFFICERS; POWERS AND DUTIES.** The Finance Director is hereby charged with the enforcement of the provisions of this ordinance. The Finance Director is hereby empowered to prescribe, adopt, promulgate and enforce rules, regulations, and forms relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the reexamination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made; and the rules and regulations promulgated by the Finance Director shall be binding upon the licensee and the employers provided, however, that any application for refund of overpayment shall be refunded if a claim for refund is made within two (2) years from the date on which such payment was made and paid, shall be made by the taxpayer under oath on a form prescribed by the director, and the information contained therein or submitted therewith shall be verified by the taxpayer's employers. No refund shall be made to any licensee or person until the taxpayer has complied with all provisions of the Ordinance and has furnished all required information. Refunds may be withheld from an employee until the employer has filed all required forms and provided all required information. Overpayments will first be applied to previous occupational license fee delinquencies prior to any other disposition.

The Finance Director or any agent or employee designated in writing by the Finance Director is hereby authorized to examine the books, papers and records of any employer or supposed employer or of any licensee or supposed licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee imposed by the terms of this ordinance. Each such employer or supposed employer or licensee or supposed

licensee is hereby directed and required to give to the Finance Director or the Finance Director's duly authorized agent or employee the means, facilities and opportunity for such examination and investigation as are hereby authorized. The Finance Director or any agent or employee designated by the Finance Director is hereby authorized to examine any person under oath concerning any wages, salaries, commissions or other compensation or net profits which were or should have been returned; and to this end the Finance Director may compel the production of books, papers, records and the attendance of all persons, whether as parties or witnesses, whom the Finance Director believes to have knowledge of such wages, salaries, commissions or other compensation or net profits, to the extent that any officer empowered to administer oaths in this state is permitted to so order.

SECTION 9. EXCLUSION OF LEVIES PROHIBITED BY LAW. It is not the intention of the city or of this ordinance to impose and require an occupational license fee prohibited by law.

SECTION 10. INFORMATION CONFIDENTIAL; OFFENSE; FINE. Any information or materials filed with the Occupational License/Net Profit Division pursuant to this ordinance or received as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance shall be and remain strictly confidential. Any person or agent divulging such information to any unauthorized party shall be guilty of a class A misdemeanor and subject to fines and imprisonment as set out in KRS 67.790. However, such persons may disclose to the state commissioner of revenue or his duly authorized agent all such information and right to inspect any of the books and records of the city if the state commissioner of revenue grants to the city the reciprocal right to obtain information from the files and records of the state department of revenue and maintains the privileged character of the information so furnished to him.

SECTION 11. PENALTIES. A penalty of five (5%) percent per month or fraction thereof (maximum of 25%/minimum of \$25.00) on any license fees remaining unpaid or for any late return made after they become due shall be assessed.

Interest at the rate of twelve (12%) percent per annum shall be added to any license fee remaining unpaid after they become due unless judgment is obtained in which twelve percent (12%) after judgment shall apply.

SECTION 12. VIOLATION, FINES. No person shall fail, neglect or refuse to make any return, or part thereof, including Form 1099 and W-2s, federal tax return, state tax return for net profits, required by this ordinance. No employer shall fail to withhold the employee license fee and to pay over to the city the fees so withheld. No person shall refuse to permit the Finance Director or any agent or employee designated in writing by the Finance Director to examine the financial records, books, and papers. No person shall knowingly make any incomplete, false or fraudulent return. No person shall fail, neglect or refuse to apply for an occupational license fee reporting number or business license. No person shall attempt to do anything whatever to avoid the full disclosure of the amount of earnings or profits in order to avoid payment of the whole or any part of the occupational license fee. A person who shall violate any of the provisions of this ordinance shall be subject to be fined pursuant to the provisions of KRS 67.790 and/or be subject to citation before the City Code Enforcement Board.

SECTION 13. REVENUE TO BE DEPOSITED IN GENERAL FUND. All revenue derived under this article shall be deposited in the General Fund.

SECTION 14. That Ordinance No. 84, Series of 2004, is hereby repealed.

SECTION 15. All ordinances of the City of Ashland and any parts of ordinances in conflict herewith, to the extent of such conflict only, are hereby repealed.

SECTION 16. Should any section, subsection, sentence, clause or phrase of this ordinance be held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect any other portion of this ordinance, it being the intention of the Board of Commissioners to enact this ordinance section by section, subsection by subsection, and all sentences, clauses or phrases hereof independently of any other section, subsection, sentence, clause or phrase.

SECTION 17. All provisions of this ordinance shall become in full force and be effective on January 1, 2008, after its adoption, readoption and publication, as required by law.

/s/STEPHEN E. GILMORE  
MAYOR

ATTEST:

/s/DEBORAH MUSSER  
CITY CLERK

ADOPTED BY THE BOARD OF COMMISSIONERS:	November 15, 2007
READOPTED BY THE BOARD OF COMMISSIONERS:	December 6, 2007
PUBLISHED:	

**MOTION**

Motion was made by Brown, seconded by Spriggs, to adopt Ordinance No. 155, 2007, at this its second reading. Upon roll call, voting aye were Commissioners Brown, Gunderson, Hogsten, Spriggs and Mayor Gilmore. Nay – none. Motion passed.