

TITLE XI: BUSINESS REGULATIONS

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PAYROLL LICENSE FEE

§ 110.01 DEFINITIONS.

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

"CITY." The City of Marion, Kentucky.

"EMPLOYEE." Any person engaging in or following any occupation, trade, or profession within the meaning of this section.

"EMPLOYER." Any person, business, firm, corporation, partnership, association, or any other kind of organization, who or that employs any person in any occupation, trade, or profession in the city, within the meaning of this section.

"GROSS SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATION." The total gross amount of all salaries, wages, commissions, bonuses, or other money payments of any kind, or any other considerations having a monetary value, which a person receives from, or is entitled to receive from, his employer for any work done or personal services rendered in any occupation, trade, or profession. Deductions shall not be allowed from the gross amount as defined herein.

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

"OCCUPATION, TRADE, AND PROFESSION." 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 nonresident of the city who is employed by any employer as defined in this subchapter where the relationship between the individual performing the service and the person for whom such 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 such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation and shall also mean and include the holding of any kind of office or position, either by election or appointment, by any federal, state, county, or city officer or employee where the services of such official or employee are rendered within the city.

"PERSON." Any natural person. 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 a corporation, shall mean the officers and directors thereof.

(Ord. passed 12-18-78; Am. Ord. 03-13, passed 6-16-03)

§ 110.02 LICENSE FEES.

There is levied and imposed an annual license fee upon all persons engaged in any occupation, trade, or profession, in the city, for the privilege of engaging in such occupation, trade, or profession, which license fee shall be measured by and be equal to .75% of the gross salaries, wages, commissions, and other compensation, earned by such person, on and after January 1, 1979, through December 31, 1979, and thereafter from January 1 of each year through December 31 of each year.

(Ord. passed 12-18-78; Am. Ord. 79-4, passed 2-19-79; Am. Ord. 87-39, passed 11-24-87)

§ 110.03 WORK WITHIN AND OUTSIDE CITY.

Where compensation is earned as a result of work done or services performed both within and outside the city the license fee required under this subchapter shall be computed by determining upon the oath of the employer, or if required by the City Treasurer, upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the city.

(Ord. passed 12-18-78)

§ 110.04 EMPLOYERS TO WITHHOLD LICENSE FEES AND FILE RETURNS.

(A) Each employer shall deduct from the pay due any employee the amount of the license fee measured by the gross salaries, wages, commissions, and other compensation due each employee beginning on January 1, 1979. The payments required to be made on account of such deductions by employers shall be made to the City Treasurer for the periods ending on March 31, June 30, September 30, and December 31, on or before the last day of the month next following the period. Provided, however, that the failure or omissions by an employer to deduct such license fee shall not relieve an employee from the payment of such license fee and compliance with the requirements for making returns as provided in this subchapter or with any regulations promulgated under this subchapter.

(B) On or before January 31 of each year, each employer shall file in the office of the City Treasurer a return on a form acceptable to him, setting forth the following information in respect to each employee employed during the preceding calendar year: Name, address, social security number, the amount of the license fees deducted and paid by the employer.

(Ord. passed 12-18-78)

§ 110.05 RETURNS TO BE FILED BY EMPLOYEE.

When a return to form and substance satisfactory to the City Treasurer is not filed by an employer and the license fees are not paid to the city by such employer, the employee for whom no return has been filed and no payment has been made shall file a return with the City Treasurer on or before January 31 of each year showing in the return his gross salaries, wages, commissions, and other compensation subject to license fees during all or any part of the preceding calendar year. Such return may be made by completing the original copy of the statement furnished him by his employer in accordance with § 110.04 hereof if such statement shows all of the salaries, wages, commissions, and other compensation earned by him, wherever employed, during the period for which such return is made. If for any reason all license fees of a person subject to the provisions of this subchapter were not withheld by his employer, such person shall file the return required by this section on a form obtainable at the City Treasurer's office. In addition to the gross salaries, wages, commissions, and other compensation earned by him, such return shall show such other pertinent information as may be required by the City Treasurer. Each person making a return required by this section shall, at the time of filing thereof, pay to the City Treasurer the amount of license fee due under this subchapter; provided, however, that any portion of the license fee deducted at the source shall be deducted on the return and only the balance, if any, shall be due and payable at the time of filing the return. The amount of any license fee which was due on March 31, June 30, September 30, and December 31, as provided herein, shall bear interest from the date the same became due at the rate of 8% per annum until paid, and the employer failing to pay the same when due shall also pay the penalty imposed under (Ord. passed 12-18-78)

§ 110.06 DUTIES OF CITY TREASURER; INVESTIGATIVE POWERS.

(A) It shall be the duty of the City Treasurer to collect and receive all license fees imposed by this subchapter and to keep records showing the amounts received by him from each employer.

(B) The City Treasurer or any agent or employee designated by him is 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 due under the terms of this subchapter by such examination. Each such employer or supposed employer or licensee or supposed licensee shall give to the City Treasurer or to his duly authorized agent or employee the means, facilities, and opportunity for the making of such examination and investigation. The City Treasurer is authorized to examine any person under oath concerning any gross salaries, wages, commissions, and other compensation which were or should have been shown in a return and to this end he may compel the production of books, papers, records, and the attendance of all persons before him, whether as parties or as witnesses, whom he

believes to have knowledge of such gross salaries, wages, commissions, and other compensation.

(Ord. passed 12-18-78)

§ 110.07 REGULATIONS MAY BE PROMULGATED.

The City Treasurer acting under the direction of the Mayor of the city, is charged with the enforcement of the provisions of this subchapter, and, subject to the approval of the City Council, is empowered to prescribe, adopt, promulgate, and endorse regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this subchapter, 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 regulations so promulgated shall be binding upon all licensees and employers.

(Ord. passed 12-18-78)

§ 110.08 INFORMATION TO BE CONFIDENTIAL.

Any information gained by the City Treasurer or any other official or agent or employee of the city as a result of any return, investigation, hearing, or verification required or authorized by this subchapter, shall be confidential, except for official purposes and except in accordance with proper judicial order.

(Ord. passed 12-18-78) Penalty, see § 110.99(E)

§ 110.09 RECORDS TO BE KEPT BY EMPLOYERS AND LICENSEES.

Employers and others subject to the license fee under this subchapter are required to keep such records as will enable the filing of true and accurate returns and such records are to be preserved for five years to enable the City Treasurer or his agent or employee to verify the correctness of the return filed.

(Ord. passed 12-18-78)

§ 110.10 INTEREST AND PENALTIES.

All license fees imposed by this subchapter which remain unpaid after they become due shall bear interest at the rate of 8% per annum and any person who has failed to pay such license fees when the same became due shall also be charged a penalty of 15% of the amount of such unpaid license fees. Any person or employer who fails or refuses to withhold any license fee payable under this subchapter, or who fails to pay such fees, after withholding the same, to the City Treasurer at the time it is due as provided under the terms of § 110.04 hereof, shall become liable to the city for such fees, as well as for the interest thereon at the rate of 8% per annum and for the aforesaid penalty.

(Ord. passed 12-18-78)

§ 110.11 USE OF LICENSE FEES.

All money derived from license fees under the provisions of this subchapter shall be paid to the City Treasurer and placed to the credit of the general fund of the city and shall be used and expended for:

(A) Defraying the current, general, and incidental expenses of the city; and

(B) For capital improvements.
(Ord. passed 12-18-78)

§ 110.12 UNLAWFUL IMPOSITION OF LICENSE FEE.

It is not the intention of the city or of this subchapter to impose and require an occupational license fee for any occupation, trade, or profession prohibited by law or ordinance.
(Ord. passed 12-18-78)

OCCUPATIONAL LICENSE TAX§ 110.20 DEFINITIONS.

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

"BUSINESS ENTITY." Each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted.

"BUSINESS." Any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "BUSINESS" shall not include the usual activities of board trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions. "BUSINESS" shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.

"CITY." The City of Marion, 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:

(1) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and

(2) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method 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.

"CONCLUSION OF THE FEDERAL AUDIT." The date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable.

"FINAL DETERMINATION OF THE FEDERAL AUDIT." The revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

"FISCAL YEAR." An accounting period of 12 months ending on the last day of any month other than December.

"EMPLOYEE." Any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

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

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

(2) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign

corporation, not engaged in trade or business within the United States, the term "employer" means such person.

"INTERNAL REVENUE CODE." The Internal Revenue Code in effect on December 31, 2006, and any amendments made subsequent to that date.

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

(1) Include any amount claimed as a deduction for state tax or local tax 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;

(2) 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;

(3) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

(4) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and

(5) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States.

"PERSON." Every natural person, whether a resident or non-resident of the city. Whenever the word "PERSON" is used in a 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.

"RETURN" or "REPORT." Any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the city.

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

"TAX DISTRICT." Any city of the first to 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.

"TAXABLE NET PROFIT." In case of a business entity having payroll or sales revenue only within the city means net profit as defined in this section.

"TAXABLE NET PROFIT." In case of a business entity having payroll or sales revenue both within and without a the city means net profit as defined in this section, and as apportioned under § 110.23.

"TAXABLE YEAR." The calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.
(Ord. 09-10, passed 11-23-09)

§ 110.21 OCCUPATIONAL LICENSE APPLICATION REQUIRED.

Every person and business entity engaged in any business in the city shall be required to apply for and obtain a occupational license from the city before the commencement of business or in the event of a change of business status. Licensees are required to notify the city of any changes in address, the cessation of business, or any other changes which render the information supplied to the city in the license application inaccurate.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.22 OCCUPATIONAL LICENSE TAX PAYMENT REQUIRED.

(A) Except as provided in division (B), every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the city an occupational license tax for the privilege of engaging in such activities within the city. The occupational license tax shall be measured by 0.75% of:

(1) All wages and compensation paid or payable in the city for work done or services performed or rendered in the city by every resident and nonresident who is an employee;

(2) The net profits from business conducted in the city by a resident or nonresident business entity, or \$25, whichever is greater.

(B) The occupational license tax imposed in this section shall not apply to the following persons or business entities:

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

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

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

(4) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profits derived from the non-public service activities apportioned to the city;

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

(6) Life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky.

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

(8) Any company providing multichannel video programming services or communications services as defined in KRS 136.602. If only a portion of an entity's business is providing multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.23 APPORTIONMENT.

(A) Except as provided in division (D), net profits shall be apportioned as follows:

(1) For business entities with both payroll and sales revenue in more than one tax district, by multiplying the net profits by a fraction, the numerator of which is the payroll factor, described in division (B), plus the sales factor, described in division (C), and the denominator of which is two; and

(2) For business entities with sales revenue in more than one tax district, by multiplying the net profits by the sales factor as set forth in division (C).

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

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

(1) The sales, lease, or rental of tangible personal property is in the city if:

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

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States government.

(2) Sales revenues, other than revenues from the sale, lease or rental of tangible personal property or the lease or rental of real property, are apportioned to the city based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the city and the denominator of which is the total time spent performing that income-producing activity.

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

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

- (1) Separate accounting;
- (2) The exclusion of any one or more of the factors;
- (3) The inclusion of one or more additional factors which will fairly represent the business entity's business activity in the city; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of gross receipts.

(E) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the city, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the city. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the city bears to the total wages and compensation paid or payable. In order for the city to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

(F) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this subchapter. The occupational license tax imposed in this subchapter is assessed against income before it is "passed through" these entities to the owners.

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

(H) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this subchapter 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. (Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.24 EMPLOYERS TO WITHHOLD.

(A) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under § 110.22. Amounts withheld shall be paid to the city in accordance with this section.

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

(C) Every employer who fails to withhold or pay to the city any sums required by this subchapter to be withheld and paid shall be personally and individually liable to the city for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.

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

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

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

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

(H) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually

liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the city, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this section unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this subchapter at the time that the taxes imposed by this subchapter become or became due.

(I) Notwithstanding divisions (G) and (H), every employee receiving compensation in the city subject to the tax imposed under § 110.22 shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this subchapter from the employee, such employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.25 RETURNS REQUIRED.

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

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the city. Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the city may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. The city may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to a 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 city from time to time may prescribe. Whenever the city deems it necessary, the city may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability the business entity.

(D) The city may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of

the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

(E) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the city at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.26 EXTENSIONS.

(A) The city may grant any business entity an extension of not more than six months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.

(B) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to 12% per annum simple interest on the tax shown due on the return, but not been previously paid, from the time the tax was due until the return is actually filed and the tax paid to the city. A fraction of a month is counted as an entire month.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.27 REFUNDS.

(A) Where there has been an overpayment of tax under § 110.24, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the city from the employer within two years from the date the overpayment was made.

(B) An employee who has compensation attributable to activities performed outside the city, based on time spent outside the city, whose employer has withheld and remitted to this city, the occupational license tax on the compensation attributable to activities performed outside the city, may file for a refund within two years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the city may confirm with the employer the percentage of time spent outside the city and the amount of compensation attributable to activities performed outside the city prior to approval of the refund.

(C) Where there has been an overpayment of net profits tax upon business levied under § 110.22, a refund or credit shall be made to any person or business entity to the extent of overpayment only upon a

written application for refund or credit to the city within two years from the date that overpayment was made.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.28 FEDERAL AUDIT PROVISIONS.

(A) As soon as practicable after each return is received, the city may examine and audit the return. If the amount of tax computed by the city is greater than the amount returned by the business entity, the additional tax shall be assessed and a notice of assessment mailed to the business entity by the city within five years from the date the return was filed, except as otherwise provided in this division.

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

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

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

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

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

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

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.29 ADMINISTRATIVE PROVISIONS.

(A) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this subchapter.

(B) Any tax collected pursuant to the provisions of this subchapter may be refunded or credited within two years of the date prescribed by law for the filing of a return or the date the money was paid to the city, whichever is the later, except that:

(1) In any case where the assessment period contained in § 110.28 has been extended by an agreement between the business entity and the city, the limitation contained in this section shall be extended accordingly.

(2) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this section or six months from the conclusion of the federal audit, whichever is later. For the purposes of this section and division (A), a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(C) The authority to refund or credit overpayments of taxes collected pursuant to this subchapter is vested exclusively in the city.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.30 INFORMATION TO REMAIN CONFIDENTIAL.

(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) The city reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the city may publish statistics

based on such information in such a manner as not to reveal data respecting net profits or compensation of any person.

(C) In addition, the city is empowered to execute similar reciprocity agreements as described in division (B) with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this subchapter.

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

§ 110.31 USE OF OCCUPATIONAL LICENSE TAX.

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

(Ord. 09-10, passed 11-23-09) See Penalty, § 110.99

INSURANCE LICENSE FEE

§ 110.40 LICENSE FEES.

(A) There is imposed on each insurance company a license fee for the privilege of engaging in the business of insurance within the corporate limits of the city for the calendar year 1985, and thereafter on a calendar year basis.

(B) The license fee imposed upon each insurance company which issues life insurance policies on the lives of persons residing within the corporate limits of the city shall be 4% of the first year's premiums actually collected within each calendar quarter by reason of the issuance of such policies.

(C) The license fee imposed upon each insurance company which issues any insurance policy which is not a life insurance policy shall be 4% of the premiums actually collected within each calendar quarter by reason of the issuance of such policies on risks located within the corporate limits of the city on those classes of business which such company is authorized to transact, less all premiums returned to policy holders; however, any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or death caused thereby, under the provisions of the Workers' Compensation Act and shall not include premiums received on policies of group health insurance provided for state employees under KRS 18A.225(2) and 18A.228, or premiums received by any state employee benefit fund created pursuant to KRS Chapter 18A for the purpose of providing health benefits to state employees.

(Ord. 84-14, passed 9-17-84)

Statutory reference:

License fees, see KRS 91A.080(2), (3), (10)

§ 110.41 RETURN AND PAYMENT OF TAX; INTEREST.

All license fees imposed by this subchapter shall be due no later than 30 days after the end of each calendar quarter. License fees which are not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6).
(Ord. 84-14, passed 9-17-84)

Statutory reference:

Return and payment of tax, see KRS 91A.080(8), (9)

§ 110.42 REPORTS REQUIRED.

Every insurance company subject to the license fees imposed by this subchapter shall annually, by March 31, furnish the city with a written breakdown of all collections in the preceding calendar year for the following categories of insurance: casualty; automobile; inland marine; fire and allied perils; health; and life.
(Ord. 84-14, passed 9-17-84)

Statutory reference:

Required reports, see KRS 91A.080(8)

SPECIAL LICENSE FEES

§ 110.55 SPECIAL LICENSE FEES.

The City Council finds that the following occupations, trades, professions, and other activities are of such a nature as to require special regulation and supervision and, in addition to the business license fees imposed by an ordinance dated December 18, 1978, the following additional police special license fees are imposed on every person, partnership, association, and corporation involved in the occupation, trade, profession, and other activities named in this subchapter, which police special license fees shall be payable in advance to the City Treasurer:

(A) Amusements. To conduct any amusement, athletic contest, or entertainment, not a part of a duly licensed business, or not held in a regularly licensed theatre or in a publicly owned or religious building, or not sponsored by a bona fide civic, patriotic, religious, or educational organization, a license fee of \$50 per event or \$100 per year.

(B) Billiard and pool tables. To operate for hire a billiard table or pool table, an annual license fee of \$25 for each such table.

(C) Bowling alley. To operate a bowling alley, an annual license fee of \$15 for each lane in the bowling alley.

(D) Carnival. To operate a carnival not sponsored by a bona fide civic, patriotic, religious, or educational organization, a license fee of \$250 per week or any part thereof.

(E) Circus. To operate a circus not sponsored by a bona fide civic, patriotic, religious, or educational organization, a license fee of \$100 per week or any part thereof.

(F) Clairvoyants, palmists, fortunetellers. To engage in the practice of being a medium, clairvoyant, soothsayer, fortune-teller, palmist, phrenologist, spiritualist, or any like activity, a license fee of \$100 per week or any part thereof.

(G) Coin-operated machines for amusement. To maintain on the premises any pinball or other coin-operated machine for amusement, an annual license fee of \$25 for each machine.

(H) Dances. To allow the general public to dance in any place or business, either to the music of an orchestra, band, or any mechanical contrivance, a license fee of \$10 per dance or \$50 per year.

(I) Pawn brokers. To engage in the business of a pawn broker, an annual license fee of \$100.

(J) Roller skating rink. To operate a skating rink, an annual license fee of \$50.

(K) Tattooing. To engage in the business of tattooing, a license fee of \$200 per week or any part thereof.

(L) Transient peddlers. All transient peddlers, transient hawkers, transient solicitors, and transient merchants selling appliances, household machines, magazines, books, encyclopaedias, novelties, confections, insurance, or any other item, article, or thing, unless specifically employed by a local wholesale or retail merchant, shall register with the Police Department immediately upon their arrival in the city and shall have their picture taken and their fingerprint made at the Police Department and shall allow sufficient time for the processing of the registration. The cost of registration shall be \$10 for each registrant. Each registrant shall receive a card stating the name of the registrant, nature of the occupation and information of due processing by the city, and the card shall be used as a proper credential by the registrant only. In the event any of the itinerant peddlers or others above named shall leave the city, a new registration shall be required when and if they return during any succeeding calendar year.

(Ord. passed 12-18-78)

§ 110.56 DUTIES OF CITY TREASURER.

It shall be the duty of the City Treasurer to collect and receive all license fees imposed by this subchapter and to keep records showing the amounts received by him from each employer.

(Ord. passed 12-18-78)

§ 110.57 INTEREST AND PENALTIES.

All special license fees imposed by this subchapter which remain unpaid after they become due shall bear interest at the rate of 8% per annum and any person, partnership, association, or corporation who has failed to pay such special license fees when the same became due shall also be charged a penalty of 15% of the amount of such unpaid special license fees.

(Ord. passed 12-18-78)

§ 110.58 USE OF LICENSE FEES.

All money derived from license fees under the provisions of this subchapter shall be paid to the City Treasurer and placed to the credit of the general fund of the city and shall be used and expended for:

(A) Defraying the current, general, and incidental expenses of the city; and

(B) For capital improvements.

(Ord. passed 12-18-78)

§ 110.99 PENALTY.

(A) Any person or employer who shall fail, neglect, or refuse to make any return required by §§ 110.01 through 110.12 or any licensee who shall fail, neglect, or refuse to pay a license fee, or any employer who shall fail to withhold the license fee or to pay over to the city such license fee, penalty, or interest imposed by §§ 110.01 through 110.12, or any person or employer who shall refuse to permit the City Treasurer or any agent or employee designated by him, in writing, to examine his books, records, and papers, or who shall knowingly make any incomplete, false, or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross salaries, wages, commissions, and other compensation in order to avoid the payment of the whole or any part of a license fee shall, upon conviction, be subject to a fine or penalty of not less than \$25 nor more than \$100 or imprisonment of not more than 30 days, or to both such fine and imprisonment, for each offense.

Such criminal penalties shall be in addition to the penalties imposed under § 110.10.

(B) For §§ 110.20 et seq.:

(1) A business entity subject to tax on gross receipts may be subject to a penalty equal to 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; or

(b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

(c) The total penalty levied pursuant to §§ 110.20 et seq. shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

(2) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 110.24 may be subject to a penalty in amount equal to 5% of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

(3) In addition to the penalties prescribed in this division, any business entity or employer shall pay, as part of the tax, an amount equal to 12% per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the city. A fraction of a month is counted as an entire month.

(4) Every tax imposed by §§ 110.20 et seq., 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.

(5) The city may enforce the collection of the occupational tax due under § 110.22 and any fees, penalties, and interest as provided in divisions (A) through (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of §§ 110.20 et seq.

(6) In addition to the penalties prescribed in this division, any business entity or employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(7) 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 §§ 110.20 et seq. 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.

(8) 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 §§ 110.20 et seq., or by the rules of the city or by written request for information to the business entity by the city.

(9) Any person violating the provisions of § 110.30 by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than \$500 or imprisoned for not longer than six months, or both.

(10) Any person violating the provisions of § 110.30 by divulging confidential taxpayer information shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(C) Any person, partnership, association, or corporation who shall fail, neglect, or refuse to pay the special license fees required by §§ 110.55 through 110.58 shall, upon conviction, be subject to a fine or penalty of not less than \$25 nor more than \$500, or imprisonment for not more than 60 days, or to both such fine and imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed under § 110.57.

(D) Any official, agent, or employee divulging such information as in §§ 110.08 and 110.28 shall, upon conviction, be subject to a fine of not less than \$250 nor more than \$1,000 or to imprisonment not exceeding 12 months or to both such fine and imprisonment, at the discretion of the court, and shall be dismissed from employment by the city upon conviction.

(Ord. passed 12-18-78; Am. Ord. 09-10, passed 11-23-09)

CHAPTER 111: PROHIBITED BUSINESS AND COMMERCIAL ACTIVITIES

<u>OFFENSE</u>	<u>KRS SECTION</u>	<u>PENALTY CLASS</u>
ADVERTISING		
Bait advertising	517.040	A misdemeanor
False advertising	517.030	A misdemeanor
BRIBERY		
Commercial bribery	518.020	A misdemeanor
Receiving commercial bribe	518.030	A misdemeanor
Receiving sports bribe	518.050	D felony
Sports bribery	518.040	D felony
DECEPTIVE BUSINESS PRACTICES	517.020	A misdemeanor
FALSIFYING BUSINESS RECORDS	517.050	A misdemeanor
FRAUD		
Defrauding judgment creditors	517.070	A misdemeanor
Defrauding secured creditors	517.060	A misdemeanor
		or
Fraud in insolvency	517.080	C or D felony
		A misdemeanor
ISSUING FALSE FINANCIAL STATEMENT	517.090	A misdemeanor
MISAPPLICATION OF ENTRUSTED PROPERTY	517.110	A misdemeanor
RECEIVING DEPOSITS IN FAILING FINANCIAL INSTITUTION	517.100	D felony
TAMPERING WITH OR RIGGING SPORTS CONTEST	518.060	A misdemeanor
TICKET SCALPING	518.070	Violation

Penalty, see Ch. 139

CHAPTER 112: PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS

Section

- 112.01 Definitions
- 112.02 License requirement
- 112.03 Application procedure
- 112.04 Standards for issuance
- 112.05 Revocation procedure
- 112.06 Standards for revocation
- 112.07 Appeal procedure
- 112.08 Provision for service of process
- 112.09 Exhibition of licenses and badges

112.99 Penalty

§ 112.01 DEFINITIONS.

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

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

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

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

"PEDDLER."

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

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

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

"SOLICITOR." Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future.

A person who is a solicitor is not a peddler.

§ 112.02 LICENSE REQUIREMENT.

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

(B) The fee for the license required by this chapter shall be as set from time to time by the legislative body.

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

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

Penalty, see § 112.99

§ 112.03 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this chapter shall file a written, sworn application with the City Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. Applications should be made on forms available in the office of the Clerk. The application shall state:

(1) The name and address of the applicant;

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

(b) The local address of such individual;

(c) The permanent address of such individual;

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

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

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

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

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

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

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

(7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in

division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) All applications for peddler or solicitor licenses shall state, in addition to statements required by division (A):

(1) A description of the applicant;

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

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

(1) Two letters of recommendation from any person residing or doing business in the city certifying the applicant's good moral character and business responsibility; or, in lieu of such letters, other evidence which may be used by the Clerk to satisfy his duties under § 112.04;

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

(3) Credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

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

(E) Upon receipt of the application, the Clerk shall cause a set of applicant's fingerprints to be taken and attached to the application; he shall also cause a picture of the applicant to be taken and to be attached to the application.

Penalty, see § 112.99

§ 112.04 STANDARDS FOR ISSUANCE.

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

(B) The Clerk shall approve the application unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant:

(1) Has been convicted of a crime of moral turpitude; or

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

will constitute valid reasons for disapproval of an application.

§ 112.05 REVOCATION PROCEDURE.

Any ^{City} license or permit granted under this chapter may be revoked by the Clerk after notice and hearing, pursuant to the standards in § 112.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten days prior to the date set for the hearing.

§ 112.06 STANDARDS FOR REVOCATION.

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

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

§ 112.07 APPEAL PROCEDURE.

(A) Any person aggrieved by a decision under §§ 112.04 or 112.06 shall have the right to appeal to the legislative body. The appeal shall be taken by filing with the legislative body, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The legislative body shall set the time and place for a

hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 112.05.

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

§ 112.08 PROVISION FOR SERVICE OF PROCESS.

(A) Requirements of successful applicant.

(1) Upon receipt of notice of approval of his application, the applicant shall file with Clerk an instrument appointing the Clerk as his true and lawful agent with full power and authority to acknowledge service of process for and on behalf of applicant in respect to any matter arising under this chapter.

(2) Forms for the required statement are available at the Clerk's office. Such form or instrument shall contain recitals to the effect that the applicant consents and agrees that service of any notice or process may be made upon this agent, and when so made shall be taken and held to be as valid as if personally served upon the applicant, according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgment.

(B) Duty of City Clerk. Immediately upon service of any process upon the Clerk under this chapter, the Clerk shall send, by registered mail, a copy of the process to the licensee at his last known address. Penalty, see § 112.99

§ 112.09 EXHIBITION OF LICENSES AND BADGES.

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

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

(C) Peddlers or solicitors shall exhibit their license at the request of any citizen.
Penalty, see § 112.99

§ 112.99 PENALTY.

Whoever violates any provision of this title shall be guilty of a misdemeanor and shall be fined not more than \$100. Each day's violation shall constitute a separate offense.

CHAPTER 113: TELECOMMUNICATIONS

Section

113.01	Definitions
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113.24	Severability
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113.26	Notices

Cross-reference:

Franchises, see T.S.O. II

§ 113.01 DEFINITIONS.

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

"BASIC CABLE SERVICE." The service tier which includes the retransmission of local broadcast signals.

"GRANTOR." The City of Marion, Kentucky.

"COUNCIL." The City Council of Marion, Kentucky.

"SYSTEM." A system utilizing certain electronic and other components which deliver to subscribing members of the public various broadband telecommunications services.

"CABLE TELEVISION RECEPTION SERVICE." The delivery by Franchisee to television receivers (or any other suitable type of electronic terminal or receiver) of the electronic signals and other communications services carried over said system.

"FCC." The Federal Communications Commission.

"FRANCHISEE." U.S. Cable Television Group, L.P., or anyone who succeeds it in accordance with the provision of this chapter.

"PERSON." Any person, firm, partnership, association, corporation, or organization of any kind, and any other legally recognized entity.

"SUBSCRIBERS." Those persons contracting to receive cable television reception services furnished under this chapter by Franchisee.

(B) When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "SHALL" is always mandatory and not merely directory.

(Ord. 96-5, passed 3-18-96)

§ 113.02 GRANT OF NON-EXCLUSIVE AUTHORITY.

(A) There is hereby granted by Grantor to Franchisee and its successors, assigns, or designees the non-exclusive right to erect, maintain, and operate in, under, over, along, across, and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses, and other public places in the City of Marion, and subsequent additions thereto, towers, poles, lines, cable, wires, manholes, and all other fixtures and equipment necessary for the maintenance and operation of a System for the purpose of transmission and distribution of analog and digital, audio, visual, electronic, and electric impulses in order to furnish television and radio programs and various other communications services for a period ending April 9, 2006, commencing from and after the effective date of this chapter.

(B) The right to use and occupy said streets, alleys, public ways, and places for the purposes herein set forth shall not be exclusive.

(C) Grantor shall not permit any person to provide services similar to those provided by Franchisee without first having secured a non-exclusive franchise from Grantor. Such franchise shall be upon substantially the same terms and conditions with the same obligations and burdens, as contained herein.

(Ord. 96-5, passed 3-18-96)

§ 113.03 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

Franchisee shall during the term hereof, except in those areas which have been preempted by either the Cable Communications Policy Act of 1984 or the Cable Television Consumer Protection and Competition Act of 1992 or which are regulated by the FCC, be subject to all lawful exercise of the regulating and police powers of Grantor.
(Ord. 96-5, passed 3-18-96)

§ 113.04 TERRITORIAL AREA INVOLVED.

This chapter relates to the present territorial limits of Grantor and to any area annexed thereto during the term of this chapter. In the event Grantor annexes any additional territory during the term hereof, Franchisee shall extend service to all areas within such annexed territory which includes at least 20 homes per mile from the then existing System at no cost to any subscriber (except for installation charges) within 90 days after a request is made by a new cable subscriber living in the newly annexed area.
(Ord. 96-5, passed 3-18-96)

§ 113.05 LIABILITY AND INDEMNIFICATION.

(A) Franchisee shall, at all times, keep in effect the following types of coverage:

(1) Worker's compensation.

(2) Property damage liability insurance to the extent of \$250,000 as to each occurrence and \$250,000 aggregate, and personal injury liability insurance to the extent of \$500,000 as to each occurrence and \$500,000 aggregate; excess bodily injury and property damage of \$1,000,000.00 each occurrence and 1,000,000 aggregate; automobile bodily injury and property damage liability combined \$1,000,000.00 each occurrence.

(B) Franchisee shall indemnify, protect, and save harmless Grantor from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any worker's compensation law which may arise out of the erection, maintenance, use, or removal of said attachments or poles within the territory of Grantor, or by any act of Franchisee, its agents, or employees. Franchisee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Franchisee shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation laws in effect that may be applicable to Franchisee. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.

(C) These damages or penalties shall include but shall not be limited to damages arising out of copyright, infringements, and all

other damages arising out of the installation, operation, or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this chapter.

(Ord. 96-5, passed 3-18-96)

§ 113.06 GENERAL SYSTEM SPECIFICATIONS.

The facilities used by Franchisee shall have a minimum capacity of 330 MHz, and 42 channel capability with 35 channels of information being available on the effective day of the chapter. Franchisee further agrees to activate a minimum of one new channel per year for the first three years of the Agreement period. The System shall also be capable of distributing color television signals, and when the signals Franchisee distributes are received in color, they shall be distributed in color where technically feasible.

(Ord. 96-5, passed 3-18-96)

§ 113.07 TECHNICAL STANDARDS.

Franchisee shall be governed by technical standards established by the FCC.

(Ord. 96-5, passed 3-18-96)

§ 113.08 CUSTOMER SERVICE STANDARDS; OPERATION AND MAINTENANCE OF SYSTEM.

(A) Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause for the shortest time possible, such interruptions, insofar as possible, shall occur during periods of minimum use of the System.

(B) All service requests and complaints should be responded to promptly, generally within 48 hours of receipt.

(C) Failure on the part of Franchisee to return a customer to service within 48 hours of receipt of complaint will, upon request by the customer, result in the issuance of a credit to that customer's account for the portion of a month they were without cable service.

(Ord. 96-5, passed 3-18-96)

§ 113.09 SERVICE TO SCHOOLS.

Franchisee shall, subject to the line extension provisions of § 113.05, provide basic cable service, at no cost to public and parochial elementary and secondary schools, at one terminal junction for educational purposes upon request of the school system.

(Ord. 96-5, passed 3-18-96)

§ 113.10 SERVICE TO CITY.

Franchisee shall, subject to the line extension provisions of § 113.05, also provide without charge, basic cable to one set at City Hall, the Fire Department, and the Police Department.

(Ord. 96-5, passed 3-18-96)

§ 113.11 ACCESS CHANNEL.

The Franchisee provides one access channel for the transmission of community access broadcast programs by residents of Grantor and recognized community organizations, at no charge. The channel currently programmed by the high school fulfills Franchisee's obligations hereunder.

(Ord. 96-5, passed 3-18-96)

§ 113.12 EMERGENCY USE OF FACILITIES.

In the case of any emergency or disaster, Franchisee shall, upon request of the Council, make available its facilities to Grantor for emergency use during the emergency or disaster. If Grantor wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to Grantor and Franchisee and provides Franchisee with the necessary equipment for such system, Franchisee will permit the Emergency System to be used on the System. Further, Franchisee will maintain said equipment and provide for regularly scheduled testing by Grantor to insure that the equipment is functioning properly.

(Ord. 96-5, passed 3-18-96)

§ 113.13 SAFETY REQUIREMENTS.

Franchisee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.

(Ord. 96-5, passed 3-18-96)

§ 113.14 LIMITATIONS ON RIGHTS GRANTED.

(A) All transmission and distribution structures, lines, and equipment erected by Franchisee within Grantor shall be located as to cause minimum interference with the proper use of streets, alleys, and the public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places, and said poles or towers shall be removed by Franchisee whenever Grantor reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places within Grantor.

(B) Construction and maintenance of the System shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of Grantor, affecting electrical installation, which may be presently in effect, or changed by future ordinances.

(C) In case of disturbance of any street, sidewalk, alley, public way or paved area, Franchisee shall, at its own cost and expense and in a manner approved by Grantor, replace and restore such street, sidewalk, alley, public way or paved areas in as good a condition as before the work involving such disturbance was done.

(D) If at any time during the period of this chapter Grantor shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, Franchisee, upon reasonable notice by Grantor, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(E) Franchisee shall on the request of any person holding a building moving permit or any persons who wish to remove trees or structures from their property temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same; the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than 72 hours advance notice to arrange for such temporary wire changes.

(F) Subject to Grantor approval, Franchisee shall have the authority to trim trees that are overhanging the streets, alleys, sidewalks, and public ways and places so as to prevent the branches of such trees from coming in contact with the wires and cables of Franchisee, except that, at the option of Grantor, such trimming may be done by it or under its supervision and direction at the expense of Franchisee.

(G) Franchisee, shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley, or public place, or remove from the street, alley, or public place any property of Franchisee when required by Grantor by reason of traffic conditions, change of establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement, provided, however, that Franchisee shall in all cases have the privileges and be subject to the obligations to abandon any property of Franchisee in place as hereinafter provided.

(H) In all sections of Grantor where Grantor designates an area where all presently aboveground services are to be placed underground, Franchisee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other aboveground services in the designated areas.

(I) In the event that the use of any part of the System is discontinued for any reason for a continuous period of 12 months, or in the event such System or property has been installed in any street or public place without complying with the requirements of this chapter, or the rights granted hereunder have been subject to the rights of the City to acquire or transfer the system as specified in § 113.16, [sic] promptly remove from the streets, or public places, all such property and poles of such System other than any which the City may permit to be abandoned in place. In the event of such removal, Franchisee shall promptly restore the street or other areas from which [sic] such satisfactory to Grantor.

(J) Any property of Franchisee to be abandoned in place shall be abandoned in such a manner as Grantor may prescribe. Upon permanent abandonment of the property of Franchisee in place, it shall submit to Grantor an instrument to be approved by Grantor, transferring to Grantor the ownership of such property.

(Ord. 96-5, passed 3-18-96)

§ 113.15 OWNERSHIP AND REMOVAL OF FACILITIES.

All cable and passive equipment for cable television reception service installed by Franchisee at a subscriber's location shall remain the property of Franchisee, and Franchisee shall have the right to remove said cable and equipment. Upon termination of all service to any subscriber, Franchisee shall promptly remove all its aboveground facilities and equipment from the premises upon the request of such subscriber.

(Ord. 96-5, passed 3-18-96)

§ 113.16 TRANSFER OF ORDINANCE.

All right, title, and interest of Franchisee in this chapter and the non-exclusive franchise granted herein shall be freely assignable without consent of Grantor.

(Ord. 96-5, passed 3-18-96)

§ 113.17 PAYMENT TO THE CITY.

The Franchisee shall pay Grantor 3% of the gross revenues received by it for basic cable and premium channel television services provided to all subscribers located within Grantor. Such payment shall be made semi-annually within 30 days after the end of each six month calendar period. All other license fees or taxes levied upon Franchisee by Grantor shall be credited against the payment required herein.

(Ord. 96-5, passed 3-18-96)

§ 113.18 DURATION AND RENEWAL OF ORDINANCE.

The rights granted to Franchisee herein shall become effective upon the passage of this chapter and shall continue for a period of ten years, and shall be subject to renewal pursuant to provisions of the Cable Act. On the fifth anniversary of this Agreement, Grantor reserves the right to request a formal review of Franchisee's performance. Such review will be conducted to determine if Franchisee is substantially complying with the terms and provisions of this Agreement.

(Ord. 96-5, passed 3-18-96)

§ 113.19 ERECTION, REMOVAL, AND COMMON USE OF POLES.

(A) No poles or other wire-holding structures shall be erected by Franchisee without prior approval of the designated representative of the Council with regard to locations, height, type, or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of Franchisee shall be a vested interest, and such poles or structures

shall be removed or modified by Franchisee at its own expense whenever the Council or its designated representative determines that the public convenience would be substantially enhanced thereby.

(B) Where poles or other wire-holding structures already existing in use in serving Grantor are available for use by Franchisee, but it does not make arrangements for such use, the Council may require Franchisee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to Franchisee are just and reasonable.

(C) Where Grantor or a public utility serving Grantor desires to make use of poles or other wire-holding structures of Franchisee but agreement therefore with Franchisee cannot be reached, the Council may require Franchisee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with Franchisee's operations.

(Ord. 96-5, passed 3-18-96)

§ 113.20 RATES AND CHARGES.

(A) A schedule of the rates and charges currently imposed by Franchisee is set forth in Attachment A to Ord. 96-5, passed 3-18-96. Grantor reserves the right to regulate such rates and charges to the extent permitted by any present or future regulatory law.

(B) In the event that Grantor has authority to regulate rates, the following procedures shall be used:

(1) Before making any changes in the rates to subscribers for basic cable services, the Franchisee shall file in writing with Grantor a new proposed rate change at least 30 days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 30-day notice period.

(2) If the Council wishes to hold a hearing on the proposed rate increase, the hearing shall be held within 30 days of the filing of the proposed rate increase by the Franchisee. Following the hearing, the Council shall take final action on the proposed increase within 30 days.

(C) Any rate subject to regulation under the above provisions may be increased without the approval of Grantor, at the discretion of the Franchisee, by an amount not to exceed 5% per calendar year. In addition, the Franchisee shall have the right to pass along to subscriber direct state and local sales taxes, franchise fees, programming cost increases, and copyright fee increases.

(D) The Franchisee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 or the Cable Television

Consumer Protection and Competition Act of 1992 and by Federal Communications Commissions regulations.
(Ord. 96-5, passed 3-18-96)

§ 113.21 BOOKS AND RECORDS.

The Franchisee shall keep full, true, accurate, and current books of accounts, which books and records shall be made available for inspection and copying by Grantor's Director of Finance or its authorized representative at all times.
(Ord. 96-5, passed 3-18-96)

§ 113.22 MISCELLANEOUS.

Franchisee's legal, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested persons.
(Ord. 96-5, passed 3-18-96)

§ 113.23 MODIFICATION OF OBLIGATIONS.

In addition to any other remedies provided by law or regulation, Franchisee's obligations under this chapter may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.
(Ord. 96-5, passed 3-18-96)

§ 113.24 SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or amended by the United States Congress, or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
(Ord. 96-5, passed 3-18-96)

§ 113.25 PUBLICATION.

Franchisee shall assume the costs of any required publication of this chapter.
(Ord. 96-5, passed 3-18-96)

§ 113.26 NOTICES.

All notices and other communications required hereunder by this chapter shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered, or certified mail, return receipt requested, postage paid to the addresses set forth in Ord. 96-5, passed 3-18-96.
(Ord. 96-5, passed 3-18-96)

