

ORDINANCE 12-20121119OR

AN ORDINANCE RELATED TO THE SALE OF ALCOHOLIC BEVERAGES WITHIN THE CITY OF GREENSBURG AT QUALIFIED HISTORICAL SITES, AND PROVIDING FOR THE REGULATION OF SUCH ACTIVITIES, THE ISSUING OF REGULATORY LICENSING OF PERSONS OR ENTITIES ENGAGING IN SALE OF ALCOHOLIC BEVERAGES, THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE.

WHEREAS, the City of Greensburg desires to adopt an Ordinances pertaining to the sale of alcoholic beverages in Aqualified historical sites@ under the definition set forth in KRS 241.010 (34) and pursuant to the authority of KRS 243.042 and a local option election;

WHEREAS, a local option election was held pursuant to KRS 242.050, as a result of which election allowed the sale of distilled spirits, wine and malt beverages by the drink and will be permitted under the provisions of KRS Chapters 241-244;

WHEREAS, sales and activities as approved in the recent local option election can create increased risks to the health, safety and welfare of the general public and to children and minors, in particular, unless appropriate regulation is adopted and enforced;

WHEREAS, the City Council deems it prudent and appropriate to provide by ordinance for the regulatory licensing and general regulation of all sales in alcoholic beverages, to provide additional protections by regulation for the benefit of the health, safety and welfare of the general public and of children and minors, in particular, and to provide for enforcement of the Ordinance as hereinafter set out;

WHEREAS, the City Council, in the enactment of this Ordinance intends that the enacted ordinance allowing sales in Aqualified historical sites@ protect and benefit the community by:

Promoting economic health within the community;

Causing the revenue stream created by expanded sales and activities to have the maximum impact on the economic health of the City of Greensburg and its business owners and citizens;

Providing expanded entertainment and cultural venues for local citizens and creating increased tourism traffic and activities;

Envisioning additions to our existing historic downtown district by the addition of small food sales, bakeries, restaurants and cafes;

Protecting our citizens and the character of our neighborhoods, as well as the entire community, from the extremes that may be associated with alcoholic beverage enterprises;

Recognizing that dollars spent with local businesses have an expanded multiplying effect on the revenue stream of the community; and,

Realizing that any and all types of alcohol sale venues may not, without proper regulation be in the best interests of our citizens, their homes or businesses and that alcohol sale venues must be regulated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENSBURG:

ARTICLE I. GENERAL

Sec. 1.1. Title: This Ordinance shall be known as the "Alcoholic Beverage Control Ordinance" of the City of Greensburg, Kentucky [ACity@].

Sec. 1.2. Purpose: The purpose of this chapter is to establish uniform regulations and requirements for the regulatory licensing and general regulation of alcoholic beverage manufacture and sales pursuant to authorization of KRS Chapters 241 through 244.

Sec. 1.3. Definitions: The definitions of the words used throughout this Ordinance, unless the context requires otherwise, shall have the same meaning as those set out in the Kentucky Alcoholic Beverage Control law (KRS Chapters 241, 242, 243 and 244) of the Commonwealth of Kentucky and all amendments and supplements thereto.

Sec. 1.4. Scope: This Ordinance shall be construed to apply to the sales in both malt beverages and distilled spirits and wine where the context permits such application. Nothing in this Ordinance shall excuse or relieve the licensee, or the owner, proprietor, employee, agent or person in charge of any licensed premises where alcoholic beverages are sold from the restrictions, requirements and penalties of any other ordinance or ordinances of the City or of any statutes of the state relating to violations pertaining to alcoholic beverages.

Sec. 1.5. The provisions of the Alcoholic Beverage Control Law of the Commonwealth of Kentucky (KRS Chapters 241, 242, 243 and 244) and all amendments and supplements thereto, are adopted so far as applicable to this Ordinance except as otherwise lawfully provided herein.

ARTICLE II. REGULATORY LICENSE FEE and SUNDAY SALES

Sec. 2.1. SPECIAL LICENSE REQUIRED FOR SUNDAY SALES. No licensee shall offer alcoholic beverages for sale on Sunday unless the licensee shall have obtained a special license for Sunday sales. All restrictions and prohibitions applying to retail drink, distilled spirits, wine and malt beverage licenses shall apply to the special licenses, unless otherwise provided by law.

Sec. 2.2. REGULATORY LICENSE FEE.

Sec. 2.2.1. Pursuant to KRS 243.000, there is hereby imposed a regulatory license fee on the gross receipts of sale of alcoholic beverages of each license issued by the Administrator. The regulatory license fee shall be six percent (6%) of gross sales of all alcoholic beverages sold by the drink. Thereafter, the City Council shall adopt at the budget adoption for each subsequent fiscal year, such annual rate for the regulatory license fee as shall be reasonably estimated to ensure full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expense related to the sale of alcoholic beverages in the City. Should the City fail to address the regulatory license fee in any budget, then the regulatory license fee shall remain at the level at which it was last fixed until such time as the City Council shall adjust the fee.

Sec. 2.2.2. Payment of such regulatory fee shall be remitted to the Administrator, and shall be held in a separate account maintained for the purpose of fully reimbursing the City for the estimated cost of any additional policing, regulatory or administrative expense related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, except that a credit against a regulatory license fee in the City shall be allowed in an amount equal to any license fee imposed by the State. The return and payment are due no later than by the end of the month immediately following each calendar quarter.

Sec. 2.2.3. Penalty for failure to file a return and pay quarterly remittance by the due date is five percent (5%) of the tax for each ninety (90) days or fraction thereof. The total late filing penalty shall not exceed twenty-five percent (25%) of the fee; provided, however, that in no case shall the penalty be less than ten dollars (\$10.00).

Sec. 2.2.4. Interest at the rate of eight percent (8%) per annum will apply to any late payments.

ARTICLE III. OFFICE OF THE CITY ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

Sec. 3.1. Pursuant to KRS 241.160, there is hereby created the office of City Alcoholic Beverage Administrator [Administrator@].

Sec. 3.1.1. The Greensburg Chief of Police shall serve as the Administrator, unless the Mayor shall appoint someone else to fill the position pursuant to KRS 241.170.

Sec. 3.1.2. The Administrator may from time to time appoint such additional personnel as is necessary to assist him or her in the administration of this ordinance.

Sec. 3.1.3. The salary for the office of Administrator, if any, together with the salaries of any other personnel assisting the Administrator, shall be fixed from time to time by the City Council.

Sec. 3.1.4. The functions of the Administrator shall be within the boundaries of the city licensing authority granted under state law. No amendment to these regulations proposed by the Administrator may be less stringent than the statutes relating to Alcoholic Beverage Control, or than regulations of the ABC Board. No regulation of the Administrator shall become effective until the City Council has first appropriately approved it.

Sec. 3.1.5. No person shall be an Administrator, an Investigator or an employee of the City under the supervision of the Administrator, who would be disqualified to be a member of the ABC Board under KRS 241.100.

Sec. 3.1.6. The Administrator shall have all authority as authorized under Chapters 241 through 244 of the Kentucky Revised Statutes. The Administrator, and the ABC Administrator's investigators, may inspect any premises where alcoholic beverages are sold, stored or otherwise trafficked in, without first obtaining a search warrant.

Sec. 3.1.7. Should the Administrator at any time have reasonable grounds to believe that any applicant, licensee, employee of a licensee, or any stockholder, agent or employee of a licensed corporation, LLC or other business organization, has a criminal record, he shall have the authority to require such person to appear in person at the Greensburg Police Department for the purpose of having his or her fingerprints taken.

Sec. 3.1.8. The Administrator before entering upon his or her duties as such, shall take the oath as prescribed in Section 228 of the Constitution and shall execute a bond with a good corporate surety in the penal sum of not less than one thousand dollars (\$1,000.00). The Administrator may require any employee under the Administrator's supervision to execute a similar bond in such penal sum as the Administrator deems necessary.

Sec. 3.2. *APPEALS.*

Sec. 3.2.1. Appeals from the orders of the Administrator may be taken to the state ABC Board by filing with the Board within thirty (30) days a certified copy of the orders of the Administrator. The Board shall hear matters at issue as upon an original proceeding. Appeals from orders of the Administrator shall be governed by KRS Chapter 13B.Sec.

3.2.2. When any decision of the Administrator shall have been appealed, or when a protest has been lodged against an application for any license within the City, and the ABC Board shall have made a decision regarding such appeal or protested application, the Administrator, upon receipt of notice of finality of the decision, shall enter such orders and take such action as required by the final order of the ABC Board. As provided by law, and

as used herein, no order of the ABC Board is final until all appeals or appeal times shall have been exhausted. A "final order" of the ABC Board is the order entered by said Board, unless an appeal is taken from the Board's order, in which case the "final order" is the order entered by the Board upon direction from the reviewing court of last resort in the final order of said reviewing court.

ARTICLE IV. HOURS FOR SALE AND DELIVERY

Sec. 4.1. A licensee for distilled spirits, wine or malt beverages by the drink shall be permitted to sell or dispense distilled spirits, wine and/or malt beverages between the hours of 11:00 a.m. on each day of the week and until 12:00 a.m. of the following day, except that such drink sales shall be permitted on Sunday only between the hours 1:00 p.m. and 9:00 p.m.

A licensee licensed to sell distilled spirits, wine or malt beverages by the drink may sell and dispense alcoholic beverages on New Year's Eve until 2:00 a.m. on January 1, provided that the appropriate licenses have been obtained from the state ABC Board.

Sec. 4.2. A licensee shall not sell or dispense any distilled spirits, wine or malt beverages during the hours that the polls are open on any election day.

ARTICLE V. CONDITIONS, PROHIBITIONS AND RESTRICTIONS

Sec. 5.1. No gambling or game of chance unless otherwise authorized by the Commonwealth of Kentucky shall be permitted in any form on such licensed premises. Dice, slot machines, or any device of chance is prohibited and shall not be kept on such premises.

Sec. 5.2. It shall be unlawful for any licensee licensed under this ordinance to have or maintain any radio receiving apparatus on such premises which is intentionally adjusted so as to receive police messages broadcast from any law enforcement agency in Green County as it is now or may hereafter be operated. In addition to other penalties provided for the violation of this section, the Chief of Police or the Administrator, or his designated investigator, shall have the authority to confiscate any and all such radio receiving apparatus.

Sec. 5.3. The licensee shall be responsible for maintaining security on his premises including providing adequate outside lighting to permit customers to utilize the parking area and to promote the safety, health and welfare of the general public utilizing the licensed premise. Security standards are further necessary to discourage unlawful activity in and around the licensed premises.

Sec. 5.4. It shall be unlawful for the licensee under this ordinance who sells alcoholic beverages of any kind to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in direct connection with the sale of alcoholic beverages nor shall any licensee give away any alcoholic beverage in any quantity for less

than a full monetary consideration.

Sec. 5.5. No licensee or agent or employee of the licensee shall permit any person to become drunk or intoxicated on the premises, nor shall any licensee sell alcoholic beverages to any person who is actually or apparently under the influence of alcoholic beverages, or known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period. No licensee shall permit any person who is actually or apparently under the influence of alcoholic beverages to remain on the licensed premises. As used herein, whether a person is actually or apparently under the influence of alcoholic beverages shall be determined by the licensee or server with specific reference to the principles and guidelines established in mandatory alcohol server training as to the signs of alcohol intoxication.

Sec. 5.6. The licensee shall not sell or dispense alcoholic beverages to any person who is under 21 years of age. The licensee shall check all identification to ascertain that every person attempting to purchase or consume alcoholic beverages is at least 21 years of age.

Sec. 5.7. The licensee shall display at all times in a prominent place a sign at least 8" x 11" in 30 point or larger type which states as follows:

Persons under the age of twenty-one (21) are subject to a fine of up to One Hundred Dollars (\$100.00) if they:

- 1. Enter licensed premises to buy, or have served to them, alcoholic beverages.*
- 2. Possess, purchase or attempt to purchase, or get another to purchase alcoholic beverages.*
- 3. Misrepresent their age for the purpose of purchasing or obtaining alcoholic beverages.*

Sec. 5.8. The licensee, before commencing any business for which a license has been issued, shall post and display at all times in a conspicuous place in the room or principal room where the business is carried on so that all persons visiting the place may readily see the license. The licensee shall not at any time post the license on premises other than the licensed premises or upon premises where traffic in alcoholic beverages is being carried on by any person other than the licensee, or knowingly deface, destroy or alter the license in any respect.

Sec. 5.9. The licensee shall post in a prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the Alcoholic Beverage Control Commission, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects. A person who violates this subsection shall be subject to a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). KRS 243.895.

Sec. 5.10. No wholesaler or distributor shall sell any alcoholic beverages to any person in the City for any consideration except under the usual credit or cash terms of the wholesaler or distributor at or before the time of delivery. Nor shall any retail licensee sell to a purchaser for any consideration except for cash at time of purchase.

Sec. 5.11. No licensee shall knowingly employ in connection with his or her business any person who:

1. Has been convicted of any felony within the last two (2) years;
2. Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;
3. Is under the age of twenty (20) years who will be serving alcoholic beverages or who will be having any contact whatsoever with the sale of alcohol as defined under state statute;
4. Within two (2) years prior to the date of his or her employment, has had any City license under this Ordinance revoked for cause.

Sec. 5.12. Licensees shall not offer reduced drink specials (e.g. two-for-one, happy hours) after the hour of 11:00 p.m. until closing.

Sec. 5.13. All retail beer and retail drink licenses shall be required to provide indoor or outdoor lavatory facilities for their customers where such beverages are consumed on the premises.

Sec. 5.14. No licensee shall offer or permit nudity, adult entertainment activities, including nude or nearly nude dancing, adult motion picture, television, slide or stage shows, cabarets or sexual entertainment centers on any licensed premise. No licensee shall permit explicit sexual activity, whether actual or simulated, upon any licensed premises. No licensee shall sponsor or permit wet t-shirt or wet clothing contests, lingerie fashion shows, mud wrestling, jello wrestling or similar activities, nor shall a licensee allow dancing with touching for compensation (including but not limited to wages, tips or gratuities), or any other service, display or contest requiring physical contact between patrons and/or patrons and employees on any licensed premises. No licensee shall sponsor, offer or permit drinking contests, all-you-can-drink specials or free drinks on any licensed premise in the City.

Sec. 5.15. No license shall be issued for any premises to operate a vehicle "drive-through" outlet for the sale of alcoholic beverages, nor shall any person or licensee operate or permit such a vehicle drive-through outlet.

ARTICLE VI. POSSESSION BY MINORS PROHIBITED; NO PERSON SHALL AID POSSESSION BY MINORS

Sec. 6.1. Except as specifically authorized under KRS 241 through 244, no person under the age of 21 may possess alcoholic beverages or enter onto any licensed premises for the purpose of acquiring alcoholic beverages.

Sec. 6.2. No person shall knowingly allow aid, assist, induce, cause or otherwise encourage any minor to be in possession of, use or consume alcoholic beverages. All licensees shall require proof of age of all persons attempting to purchase or consume alcoholic beverages on the licensee's premises.

Sec. 6.3. No person being the owner or occupant or otherwise in possession or control of any property located within the City shall knowingly allow any minor to remain on such property while in possession of, using or consuming alcoholic beverages.

Sec. 6.4. It shall be a defense to any prosecution under this section if the person charged, upon discovery of said minor individuals, manifests a proper effort to enlist the aid of and cooperate with law enforcement personnel in stopping the minor individuals' possession, consumption or use of alcoholic beverages, or that the minor individuals' possession of alcoholic beverages was exempted by KRS 244.087.

ARTICLE VII. ENFORCEMENT.

City police officers and the Administrator are authorized to enforce this Ordinance for alleged violations.

ARTICLE VII. MANDATORY RESPONSIBLE BEVERAGE SERVICE TRAINING

Sec. 8.1. All persons employed in the selling and serving of alcoholic beverages shall participate in and complete the STAR (Server Training in Alcohol Regulations) beverage service training program.

Sec. 8.2. All persons required to complete training under paragraph (1) above shall complete that training within thirty (30) days of the date on which the person first becomes subject to the training requirement. When a new business is licensed to serve alcoholic beverages all employees must be trained prior to the opening of the business.

Sec. 8.3. Each licensee shall be responsible for compliance with the training requirements and shall maintain for inspection by the Administrator a record or file on each employee that shall contain the pertinent training information. Each premise licensed hereunder must at all times when alcoholic beverages are being served have at least one person currently certified in responsible beverage service training on duty.

Sec. 8.4. All persons completing the training required by this section shall be re-certified in responsible beverage service training from a program approved by the City not less than once every three years thereafter.

ARTICLE IX. SIGNS AND ADVERTISING: CERTAIN OTHER ADVERTISING PROHIBITED

Sec. 9.1. All signage shall be in compliance with any and all other existing rules and regulations of the City.

Sec. 9.2. Any off premises signage advertising the sale of alcoholic beverages is prohibited. It shall be unlawful to attach signage advertising alcoholic beverages to the exterior of the building or the exterior premises of the business. This prohibition shall include the use of outdoor umbrellas or other outdoor or patio fixtures that feature the name or logo of an alcoholic beverage or manufacturer of alcoholic beverages.

Sec. 9.3. Signage which refers directly or indirectly to alcoholic beverages will be limited to one (1) sign not over two (2) square feet that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of displaying advertising which refers either directly or indirectly to alcoholic beverages shall be displayed on, nor shall it be visible from the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business cards not larger than two and one-half inches (2-1/2") in size, setting forth the price at which the licensee offers alcoholic beverages for sale.

Sec. 9.4. No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.

Sec. 9.5. It shall be unlawful for a licensee under this chapter to distribute or cause to be distributed any handbills, circulars, or cards as a medium of advertising alcoholic beverages.

Sec. 9.6. Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

Sec. 9.7. No licensee shall publish or display advertising that is false or misleading, nor shall any licensee publish or display advertising that implies that consumption of alcoholic beverages is fashionable or the accepted course of behavior, or advertising that contains any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, whether or not any known athlete is depicted or referred to, nor shall any licensee publish or display advertising that encourages intoxication by referring to the intoxicating effects of alcohol (or the use of terms such as "high test", "high proof" or "extra strong") or depicting activities that tend to encourage excessive consumption.

ARTICLE X. PATIO AND OUTDOOR SALES; WHERE PERMITTED; APPROVAL REQUIRED; SCREENING REQUIREMENTS

Sec. 10.1. Patio and outdoor sales of alcoholic beverages shall be permitted only on premises licensed for sales of alcoholic beverages by the drink.

Sec. 10.2. No licensee shall offer alcoholic beverages for sale in a patio or outdoor area of the licensee's premises except in a clearly defined patio or outdoor area that is enclosed by a fence or other screening, not less than three (3) feet in height. All outdoor areas and screening shall be subject to the approval of the Administrator. An exception to this restriction may be granted for seasonal sidewalk cafes, upon application to and

authorization from the Administrator. The permission to operate a sidewalk café shall be governed by the provisions of this Article and shall be subject to the regulation of local zoning authorities as well as codes enforcement and public safety officers.

Sec. 10.3. No licensee shall offer patio or outdoor sales of alcoholic beverages unless the patio or outdoor area and fencing or screening area shall have been approved in advance by the Administrator.

Sec. 10.4. Unless exempted by the following provisions of this ordinance and by permission of the Administrator, patio areas must comply with the screening requirements of this ordinance. Sidewalk café seating areas must comply with this ordinance and with local zoning ordinance and other public safety requirements noted in this ordinance or in other provisions of local ordinance, statute or regulation.

ARTICLE XI. IMPLEMENTATION OF ORDINANCE PROVISIONS.

From time to time, the Greensburg City Council may by municipal order promulgate such rules and regulations and may publish and utilize such forms and other documents as in its discretion may be necessary for the proper implementation of this chapter.

ARTICLE XII. REPEAL OF PRIOR ORDINANCES PERTAINING TO ALCOHOLIC BEVERAGE CONTROL.

On the effective date of this ordinance, it shall supersede and supplant prior ordinances pertaining to alcoholic beverage control.

ARTICLE XIII. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause, phrase, or a portion of this ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

ARTICLE XIV. EFFECTIVE DATE.

This ordinance shall be effective at midnight on November ____, 2012.

PUBLICLY INTRODUCED AND READ FIRST TIME: October ____, 2012

PUBLICLY READ SECOND TIME AND PASSED: _____, 2012

APPROVED:

George C. Cheatham, Mayor

ATTEST:

Janie Casey, City Clerk

SUMMARY OF ORDINANCE 12-20121119OR

AN ORDINANCE RELATED TO THE SALE OF ALCOHOLIC BEVERAGES WITHIN THE CITY OF GREENSBURG AT QUALIFIED HISTORICAL SITES, AND PROVIDING FOR THE REGULATION OF SUCH ACTIVITIES, THE ISSUING OF REGULATORY LICENSING OF PERSONS OR ENTITIES ENGAGING IN SALE OF ALCOHOLIC BEVERAGES, THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE.

Narrative Summary of the Ordinance:

Ordinance 12-20121119OR repeals and replaces prior ordinances pertaining to the trafficking in alcoholic beverages within the City of Greensburg in Qualified Historical Sites as defined in KRS 241.010(34) and pursuant to the authority of KRS 243.042. This ordinance takes effect upon publication dated December 5th, 2012.

The Ordinance provides for the incorporation of Kentucky state alcoholic beverage laws as set out in KRS 241-244, and, together with such state statutes, relates to and regulates all sales of alcoholic beverages within the City of Greensburg in Qualified Historical Sites.

The ordinance establishes the office of the City Alcoholic Beverage Control Administrator and sets forth the duties and prerogatives of said office. The ordinance sets forth the regulatory fees that the City may impose and penalties for non-payment.

The ordinance prescribes the hours during which alcoholic beverages may be sold and conditions other conditions, prohibitions and restrictions on licensed premises, including without limitation the prohibition against unauthorized gambling, maintaining police scanners, sales to minors, prohibition of certain activities such as adult entertainment activities, drinking contests nor offer free drinks. The ordinance prohibits drive-through outlets for the sale of alcoholic beverages. A full listing of prohibited activities may be obtained at City Hall.

The ordinance mandates that all locations obtaining the required licensure through the Alcohol Beverage Control Board of Kentucky also require all employees serving alcohol to participate and complete the STAR (Server Training in Alcohol Regulations) training program. Additionally the ordinance contains certain signage requirements and some signage and advertising restrictions.

The ordinance provides for the enforcement by the City police and by the City ABC Administrator and sets penalties for the violation of the ordinance.

The ordinance, in its entirety shall be filed herewith in the Office of the City Clerk of the City of Greensburg, being marked and designated as Ordinance No. 12-20121119OR

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ORDER
of
GREEN COUNTY JUDGE/EXECUTIVE

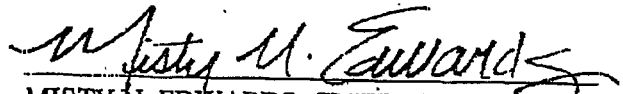
KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, a Petition was filed with the Green County Court Clerk on March 10, 2011, requesting "the Green County Judge/Executive to order that a local option election be held on May 17, 2011, on the question of selling alcoholic beverages in only qualified historic sites in only the South Greensburg Precinct of Green County, Kentucky, pursuant to KRS 242"; and

WHEREAS, the Green County Court Clerk having found that said Petition contains sufficient valid signatures and words meeting all the requirements of KRS 242 for causing a local option election to be held in the South Greensburg Precinct of Green County, Kentucky, on the question of selling alcoholic beverages by the drink at qualified historic sites in the South Greensburg Precinct;

NOW THEREFORE, IT IS HEREBY ORDERED that there shall be an election held on May 17, 2011, in the South Greensburg Precinct of Green County, Kentucky, asking the question: "Are you in favor of the sale of alcoholic beverages by the drink at qualified historic sites in the South Greensburg Precinct of Green County?"

Dated this 11th day of March, 2011.


MISTY N. EDWARDS, GREEN COUNTY
JUDGE/EXECUTIVE

Occupational License and Net Profits Tax

CITY OF GREENSBURG

ORDINANCE NO. 060414

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF A OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN THE CITY OF GREENSBURG, KENTUCKY.

WHEREAS, the Greensburg city council desire(s) to comply with the requirements of KRS 67.750 to 67.790 and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and businesses entities conducting businesses, occupations, and professions within the City of Greensburg, so that the assessment and payment of Occupational License and Net Profits Taxes can be administered more efficiently.

Now, therefore, be it ordained by the city council of the City of Greensburg, Kentucky as follows:

Ordinance No. 060412 is hereby enacted and shall read in full as follows:

Sections:

- | | |
|----|-------------------------------------------|
| 1 | Definitions |
| 2 | License Application Required |
| 3 | Occupational License Tax Payment Required |
| 4 | Apportionment |
| 5 | Employers to Withhold |
| 6 | Payment of Estimated Tax Quarterly |
| 7 | Returns Required |
| 8 | Extensions |
| 9 | Refunds |
| 10 | Federal Audit Provisions |
| 11 | Administrative Provisions |
| 12 | Information to Remain Confidential |
| 13 | Penalties |
| 14 | Use of Occupational License Tax |
| 15 | Severability |
| 16 | Prior Ordinances and Effectiveness |

§ 1 - Definitions

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

- (1) "Business entity" means 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;
- (2) "Business" means 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 of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions. "Business" shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, 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.
- (3) "City" means the city of Greensburg, Kentucky.
- (4) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
 - (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
 - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;

- (5) "Conclusion of the federal audit" means 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;
- (6) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.
- (7) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December;
- (8) "Employee" means 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 (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.
- (9) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:
- (a) 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
 - (b) 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;
- (10) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2003, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2003, that would otherwise terminate;
- (11) "Net profit" means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:
- (a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign

country or political subdivision thereof;

- (b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
 - (c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;
 - (d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and
 - (e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;
- (12) "Person" shall mean 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;
- (13) "Return" or "Report" means 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;
- (14) "Sales Revenue" means receipts from the sale, lease, or rental of goods, services, or property;
- (15) "Tax district" means any city of the first to fifth class with the authority to levy net profits, or occupational license taxes;
- (16) "Taxable net profit" in case of a business entity having payroll or sales revenue only within the city means net profit as defined in subsection (11) of this section;
- (17) "Taxable net profit" in case of a business entity having payroll or sales revenue both within and without the city means net profit as defined in subsection (11) of this section, and as apportioned under Section (4) of this Ordinance; and
- (18) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

§ 2 - Occupational License Application Required

- (1) Every person and business entity engaged in any business in the city of Greensburg shall be required to apply for and obtain a occupational license from the city of Greensburg 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.

§ 3 - Occupational License Tax Payment Required

- (1) Except as provided in subsection (2) of this section, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the city an occupational license tax for the privilege of engaging in such activities within the city. The occupational license tax shall be measured by 1% of:
 - (a) 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;
 - (b) the net profit from business conducted in the city by a resident or nonresident business entity or \$25.00, whichever is greater. This minimum fee shall be due not later than February 1st of each year. If temporarily engaged in business in the City or if starting new business, this minimum license fee shall be paid prior to starting any business activity.
- (2) The occupational license tax imposed in this section shall not apply to the following persons or business entities:
 - (a) Any bank, trust company, combined bank and trust company, or trust, banking and title insurance company organized and doing business in this state, any savings and loan association whether state or federally chartered;
 - (b) Any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;
 - (c) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;
 - (d) 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 profit derived from the non-public service activities apportioned to the city;

- (e) 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 net profits derived from the manufacturing or trafficking in alcoholic beverages;
- (f) Life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky.

§ 4 - Apportionment

- (1) Except as provided in subsection (4) of this section, net profit shall be apportioned as follows:
 - (a) For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is two (2); and
 - (b) For business entities with sales revenue in more than one (1) tax district, by multiplying the net profit by the sales factor as set forth in subsection (3) of this section.
- (2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the 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.
- (3) 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.
 - (a) The sale, lease, or rental of tangible personal property is in the city if:

1. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the city regardless of the f.o.b. point or other conditions of the sale; or
 2. The property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States government.
- (b) 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.
- (c) Sales revenue from the sale, lease, or rental of real property is allocated to the tax district where the property is located.
- (4) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the 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:
- (a) Separate accounting;
 - (b) The exclusion of any one (1) or more of the factors;
 - (c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the city; or
 - (d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.
- (5) 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.
- (6) All partnerships, S corporations, and all other entities where income is "passed through" to the owners are subject to this ordinance. The occupational license tax imposed in this ordinance is assessed against income before it is "passed through" these entities to the owners.

- (7) 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.
- (8) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.

§ 5 - Employers to Withhold

- (1) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under Section (3) of this ordinance.
- (2) 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.**
- (3) Every employer who fails to withhold or pay to the city any sums required by this ordinance 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.
- (4) 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.
- (5) 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.
- (6) 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.

- (7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.
- (8) 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 subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.
- (9) Notwithstanding subsections (7) and (8) of this section, every employee receiving compensation in the city subject to the tax imposed under Section (3) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer.

§ 6 - Payment of Estimated Tax Quarterly

- (1) Every business entity, other than a sole proprietorship, subject to taxation under this ordinance, shall make quarterly estimated tax payments on or before the fifteenth day of the fourth, sixth, ninth, and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars (\$5,000).
- (2) The quarterly estimated tax payments required under subsection (1) of this section shall be based on the lesser of:
 - (a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;
 - (b) Twenty-five percent (25%) of the preceding full year taxable year tax liability; or
 - (c) Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable years' tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars (\$20,000).
- (3) Any business entity that fails to submit the minimum quarterly payment required under subsection (2) of this section by the due date for the quarterly payment shall pay an

amount equal to twelve percent (12%) per annum simple interest on the amount of the quarterly payment required under subsection (2) of this section from the earlier of:

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

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

- (4) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the city or any first taxable year in which a business entity's tax liability exceeds five thousand dollars (\$5,000).
- (5) At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

§ 7 - Returns Required

- (1) 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.
- (2) 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.
- (3) 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.

- (4) Every business entity making payments of \$600 or more to persons other than employees for services performed within the city are responsible for maintaining the records of those payments and for completing IRS Form 1099 on or before February 28 of the year following the close of the calendar year in which such compensation was paid. Persons or business entities not required to remit a Form 1099 remain liable to the city to remit equivalent information for any compensation made to persons or business entities that are not employees.
- (5) 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.
- (6) 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.

§ 8 - Extensions

- (1) The city may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.
- (2) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not 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.

§ 9 - Refunds

- (1) Where there has been an overpayment of tax under Section (5) of this ordinance, 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 (2) years from the date the overpayment was made.
- (2) 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 (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the city 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.

- (3) In the case where the tax computed under the provisions of this ordinance is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund or credit, if a credit is requested, shall be made upon the filing of a return.
- (4)
 - (a) Overpayment resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year;
 - (b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this ordinance.

§ 10 - Federal Audit Provisions

- (1) 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 (5) years from the date the return was filed, except as otherwise provided in this subsection.
 - (a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.
 - (b) In the case of a return where a business entity understates net profit, or omits an amount properly includable in net profits, or both, which understatement or omission, or both, is in excess of twenty-five percent (25%) of the amount of net profit stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.
 - (c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the city receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this subsection may be extended by agreement between the business entity and the city. 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.

- (2) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.
- (3) The city may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.

§ 11 - Administrative Provisions

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this ordinance.
- (2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the city, whichever is the later, except that:
 - (a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.
 - (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (1) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

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

§ 12 - Information to Remain Confidential

- (1) 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 law or in any action challenging a tax district tax laws.

- (2) 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 or business entity.
- (3) In addition, the city is empowered to execute similar reciprocity agreements as described in subsection (2) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance.

§ 13 - Penalties

- (1) A business entity subject to tax on net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:
 - (a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the city; or
 - (b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.

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

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

- (3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the city. A fraction of a month is counted as an entire month.
- (4) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.
- (5) The city may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (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 this ordinance.
- (6) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- (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 this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.
- (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 this ordinance, 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 section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both.
- (10) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year, or both.

§ 14 - Use of Occupational License Tax

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

§ 15 - Severability

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

§ 16 – Prior Ordinances and Effectiveness

That all City Ordinances, orders, resolutions, motions or parts thereof, insofar as same may be in conflict herewith, are repealed. This Ordinance shall be in full force and effect as of January 1st, 2007 following its passage, approval and publication according to law.

George Carlisle Cheatham, II
Mayor

Attest:

Janie Blakeman Casey, City Clerk

First Reading _____ 12-04-2006 _____

Second Reading _____ 12-11-2006 _____

Publication _____ 12-27-2006 _____