

ORDINANCE 10-94

"AN ORDINANCE FIXING AND REGULATING THE BUSINESS LICENSE FEES AND MANNER AND FORM OF GRANTING AND ISSUING SAME ON ALL TYPES OF BUSINESS, TRADES, OCCUPATIONS, PROFESSIONS, VOCATIONS AND CALLINGS IN THE CITY OF MAYFIELD, KENTUCKY, AND PROVIDING, PENALTIES NON-PAYMENT THEREOF AND FOR VIOLATION THEREOF, AND MAKING IT UNLAWFUL TO ENGAGE IN ANY SUCH BUSINESS, TRADES, OR OCCUPATIONS, WITHOUT FIRST PAYING THE LICENSE TAX AND PROCURING LICENSES AS PROVIDED HEREIN: PROVIDING THAT THE LICENSE FEES COLLECTED SHALL BE PAID INTO THE GENERAL FUND OF THE CITY FOR PAYMENT OF GENERAL GOVERNMENTAL EXPENSES OF THE CITY, AND FOR CAPITAL IMPROVEMENTS."

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MAYFIELD, KENTUCKY:

SECTION I: LICENSE FEES;

(A) There is levied and imposed an annual license fee upon all persons, firms, associations, corporations, or other activity in the city, for the privilege of engaging in such occupation, trade profession, or other activity, which license fee shall be measured by and be equal to 2 % of the first \$ 50,000 and 1 % of the next \$ 450,000, and ½% of all over \$ 500,000 of all the gross salaries, wages, commissions, and other compensations earned for work done or services performed or rendered in the city and the net profits of all businesses, professions, or occupations from activities conducted in the city.

(b) Where such business is a Partnership, Corporation or Sub chapter S Corporation, that Partnership, Corporation or Sub chapter S Corporation shall pay a license fee on all net profits derived from sales or services performed within the City of Mayfield. Should one or more employee of a Partnership, Corporation or Sub chapter S corporation own more than 20 % of said business and pay the 2% payroll tax on combined salaries in excess of \$ 50,000, then said Partnership, Corporation or Sub chapter S Corporation shall only pay 1% of all subject net profits up to \$ 500,000 and ½ % of all net profits in excess of \$ 500,000.

(c) Where such salaries, wages, commissions, and other compensations and net profits are earned for work done or services performed or rendered both within and without the city, the license fees shall be measured by such part of the salaries, wages, commissions, and other compensations and net profits as is earned as a result of work

done or services performed or rendered in the city. Such license fees shall be computed by obtaining the percentage which the compensation or net profits for work performed or services rendered within the city bears to the total compensation earned.

SECTION II: DEFINITIONS;

As used in this ordinance, the following terms shall, except as otherwise provided herein, have the respective meanings ascribed to them:

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

Business: Shall include the carrying on or exercise for gain or economic benefit, either direct or indirectly, of any business, trade, profession, occupation, vocation, calling or commercial activity whatsoever in the city. The term "business" shall not include the usual activities of boards of trade, chambers of commerce, trade associations or unions (or other associations performing the services usually performed by trade associations or unions), community chest funds or foundations; corporations organized and operated exclusively for religious, charitable, scientific, literary, educational or fraternal purposes, where no part of the earnings or income or receipts from such units, groups, or associations shall be from engaging in activities other than the activities in which such units, groups or associations usually engage; such other activities shall be included in the term "business"; provided further, that activities conducted for gain or profit by any educational institution, hospital, or any other institution mentioned in this subparagraph are included in the term, "business."

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

EMPLOYEE: Any person engaging in or following any trade, occupation, profession, or activity within the meaning of "OCCUPATION," "TRADE," or "OTHER ACTIVITY."

EMPLOYER: Any individual, person, partnership, association, corporation, governmental body, unit, administration, or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.

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

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

NET PROFITS: The net income from the operation of a business or enterprise after provision for all costs and expenses incurred in the conduct thereof, shall be the same as reported for federal income tax purposes excluding items exempted under this ordinance, but without deduction of taxes based on income.

OCCUPATION, TRADE, PROFESSION, or OTHER ACTIVITY: The doing of any kind of work, the rendering of any kind of personal service, or the holding of any kind of position or job within the city, by any clerk, laborer, tradesman, manager, official, or other employee, including any nonresident of the city who is employed by an employer as defined in this ordinance, where the relationship between the individual performing the services 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 a 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 include and mean the holding of any kind of office or position, either by election or appointment, by the federal, state, county, or city government or any officer or employee thereof where the services of such official or employee are rendered within the city.

PAYROLLS: The total wages, salaries, and other personal service compensation.

PERSON: Any natural person, partnership, fiduciary, association, or corporation. Whenever the word "PERSON" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to a corporation, shall mean the officers and directors thereof.

SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATIONS: The total gross amount of all salaries, wages, commissions, bonuses, share of net partnership receipts or withdrawals, corporate dividends paid in lieu of salaries or wages, and any and all other payments or other consideration which a person receives from, or is entitled to, for any work done or personal services rendered in any trade, occupation, or profession or any other activity, including all deductions whether for tax, insurance, or other. Amounts paid to traveling salesmen or other workers as allowance or reimbursement for travel or other expenses incurred in the business of the employer are excluded; but to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to his employer they are included in the foregoing definition.

TRANSIENT MERCHANT: Any person carrying on or exercising for gain or economic benefit, either directly or indirectly, any business, trade, profession, occupation, vocation, calling or commercial activity whatsoever in the City of Mayfield on an infrequent basis for periods not exceeding Fourteen (14) consecutive days.

SECTION III: SUBJECT BUSINESS ENTITIES;

(A) In the case of an individual, partnership, association, corporation, fiduciary, or other entity engaged in the conduct, operation, or prosecution of any business, profession, or other enterprise there is imposed an annual license fee, as described in section I of this ordinance, on the net profits of such business, profession, or other enterprise, if and to the extent conducted in or derived from activity in the city.

(B) The term "business receipts", used in determining receipts subject to net profit, shall include the gross receipts from all sales made from a place of business within the city, both to persons within the city and to persons outside the city, including sales made by contracts entered into within the city, except when such sales are subject to a local occupational tax within another city or taxing district, or specifically exempt by other sections of this ordinance.

(C) (1) A business entity within the meaning of Section II which has a branch, office, store, warehouse, or other place in which the entity's business is transacted, located in the city, shall be considered to be conducting, operating, prosecuting, or carrying on a trade, business, profession, enterprise undertaking, or other activity to the full extent of the sum total of all transactions, originating or consummated in, by or through such city branch, office, store, warehouse, or other place of business including:

(a) Billings made on such transactions;

(b) Services rendered;

(c) Shipments made;

(d) Goods, Chattels, or merchandise sold;

(e) Commissions, fees, or other remuneration or payments earned as determined by division (E) below.

(2) The absence of a branch office, store, warehouse, or other permanent place of business within the city shall not exempt or render non-licensable the net profits of any trade, business, profession, enterprise, or other activity on which a license fee is imposed by this chapter.

(D) In the case of partnership, association, or other unincorporated business owned by one or more persons the license fee, generally, shall be on the partnership, association, or business enterprise as an entity and not ordinarily on the partners or members thereof.

(E) In determining the proportion or amount of the subject net profits of a business entity doing business within the city, such business entity shall use and apply the

business allocation percentage formula set forth in Section IV. For explanation of formula, see division (F) below.

(F) Business allocation percentage.

(1) The licensee shall use the formula set forth in Section IV to compute the percentage of their entire net profits (derived from activities both within and outside the city) which is subject under this ordinance, and to determine the license fee payable to the city thereunder.

(2) If the licensee was doing business in the city during such period, the business allocation percentage and license fees shall be computed on the following basis.

(a) The business allocation percentage is computed by determining the percentage which the licensee's business receipts within the city bear the licensee's entire business receipts, wheresoever derived.

(b) After determining such business allocation percentage, the license fee shall be determined by applying that percentage to the entire net profits of the licensee wheresoever, derived, (thus arriving at the subject net profit) and then computing the fee according to section I of this ordinance.

SECTION IV: COMPUTATION OF PERCENTAGE;

The net profits of businesses and professions from activities conducted within the city shall be computed as follows:

Multiply the entire net profit from all sources by a business allocation percentage to be determined by ascertaining the percentage which the gross receipts of the licensee from sales or services rendered within the city bears to the total gross receipts from sales or services rendered wherever made.

SECTION V: ADMINISTRATION.

This ordinance shall be administered by the City Clerk, under the direction of the council. The City Clerk with the approval of the council shall have authority to issue and promulgate such regulations as he may consider necessary for the administration of this article, provided such regulations are not inconsistent with the provisions of this ordinance. No license shall be issued for any unlawful activity, or for any business that the City Clerk with the approval of the Mayor shall consider to be detrimental to the public welfare or contrary to the public welfare or contrary to the public interest, but any such decision to refuse to issue a license may be appealed to the council.

SECTION VI: RETURNS TO BE FILED; PAYMENT OF LICENSE FEE

(1) Except as otherwise provided, each person subject to the payment of a license fee under this ordinance shall file a return with the City Clerk on or before the first day of May of each year. Such returns shall be filed on forms to be furnished by the city, which shall be obtained at the office of the City Clerk. Each return shall show the type of business, profession, occupation, trade, vocation, calling or activity engaged in or services rendered; the licensee's net profit during last calendar year, or such licensee's last fiscal year ending prior to May first (the same year used by the licensee in making such taxpayer's income tax return to the state); the address of each place of business being licensed; the exact name shown on the licensee's income tax return to the state for the same tax year being reported on to the city; and such other information as may be considered necessary by the City Clerk. In order to ascertain any facts

necessary to determine the amount of the license fee to be paid, the licensee must include with his or her return either a copy of Schedule "C" from their Kentucky State Income Tax

return, a statement from a Certified Public Accountant or Licensed Tax preparer stating the subject net profit for the licensee within the city, or a declaration of tax due computed

by the licensee which shall include a promissory statement agreeing to an audit of the licensee's tax returns at the office of the City Clerk within six months of the filing date.

(2) If the City Clerk determines, on a basis of auditing such returns that the full amount of license fee has not been paid, a notice of additional tax due may be served at any time within five (5) years after the license fee was payable under this ordinance, and such additional fee shall be due and payable upon the receipt of such notice. Any person subject to a license fee under this ordinance shall retain all notes, books, and records for a period of five (5) years after a license fee was due based upon data in such notes, books and records.

(3) Each person, association, corporation, or other entity engaged in any occupation, trade, profession, or other activity in the city, except employees, shall pay a minimum license fee of

\$ 100.00, regardless of net profit, due and payable at the time of filing of the annual return.

(4) Except as otherwise provided, the amount of any license fee due under this ordinance shall be payable at the time of filing the return required by this ordinance.

SECTION VII. SECRECY OF RETURNS / PENALTIES FOR VIOLATION

The information in returns filed by persons subject to license fees under this ordinance shall be confidential as respecting the business of any such person and shall be made available only to officers and employees of the city whose official duties require the use of such information, and on a confidential basis to the State Secretary of Revenue or to employees in such secretary's department in reciprocation for access to confidential files under such secretary's supervision. Any person divulging such information except on order of a court of competent jurisdiction shall, upon conviction, be subject to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or to imprisonment for not exceeding thirty (30) days, or both fine and imprisonment at the discretion of the court or jury. Any employee of the city who unlawfully divulges such information shall upon conviction be dismissed. The city may publish statistics based on information derived from such returns in such a manner as not to reveal data respecting the business of any particular person.

SECTION VIII: RESPONSIBILITY OF AGENT OF NONRESIDENT PROPRIETOR.

The agents of nonresident proprietors shall be civilly responsible for the license fees provided for by this ordinance, and criminally responsible for carrying on business without having first procured a license to do so in a like manner as if they were proprietors.

SECTION IX: LICENSE CERTIFICATES.

A license certificate shall be issued to each person paying a license fee due under this ordinance for a licensee year, or remaining portion of a license year in the case of a new business. Such certificate shall show the year for which issued, the name of the person to whom issued, and the address or location of the place of business being licensed. A license may be transferred from one person to another if kind of business is not materially changed and may be transferred to cover another location if a licensee moves the place of business. Each licensee shall display such license certificate in a conspicuous place in each licensed place of business.

SECTION X: LICENSE FEES FOR NEW BUSINESSES

(a) Any person, before entering into or following any business, profession, occupation, trade, vocation, calling or other activity, for which a license fee is payable under this ordinance, shall first pay to the city clerk a license fee to be determined as follows: If entered or begun during the first six (6) months of a license year, the minimum annual license fee shall be pro-rated on a monthly basis for the remainder of the license year, and fifteen (15) days or more in a license month shall be considered a whole month for such purpose; if entered or begun during the last six (6) months of a license year one-half of the minimum annual license fee shall be paid for the remainder of the license year.

(b) Any person who paid a license fee under this ordinance for all or part of one year and engages in the same business activity in the following year shall pay a license fee for such following year based upon such person's net profit during the preceding calendar year, which shall not be prorated; provided, however, that a penalty shall not apply to a license fee paid after May first if the licensee has not performed any business activity prior to the payment of such license fee.

SECTION XI: REFUNDS.

The city clerk, with the approval of the council, is authorized to make refunds of license fees paid under this ordinance if satisfactory evidence is presented that an error was made in determining the amount of a license fee, or that incorrect data was shown on a licensee's return, or that a misinterpretation of the provisions of this ordinance resulted in the payment of a license fee in excess of the amount properly payable; provided, however, that application for a refund must be made prior to the end of the license year for which the license fee was paid.

SECTION XII: USE OF LICENSE TAXES.

All money derived from license taxes under the provisions of this ordinance shall be paid to the city clerk and placed to the credit of the general revenue fund of the city, and shall be used and expended for:

(1) Defraying the current, general and incidental expenses of the city:

(2) For capital improvements: and

(3) For the construction and reconstruction of streets, alleys, curbs, and sidewalks as authorized by the council.

SECTION XIII: REVOCATION OR SUSPENSION OF LICENSE.

(a) Any license issued under this ordinance may, with notice to the holder thereof, and a hearing as hereinafter provided, be revoked or suspended by the council:

(1) If, within twelve (12) months prior to the date on which charges are filed, there has been a conviction of any person for any action or activity occurring in, on, or at the premises covered by the license in violation of any provision of this ordinance or any other ordinance of the city or of a statute of the commonwealth against gambling, disorderly conduct, or any other offense, and a judgment of conviction in any court of competent jurisdiction shall be conclusive evidence of such violation, or

(2) If there shall occur in, on, or at the premises covered by the license any condition which is a nuisance or obnoxious to the morals and general welfare of the public, or

(3) If any person is disorderly in, on, or at the premises covered by the license and disturbs the good order of the community or the license holder suffers or permits any disorderly conduct in, on or at the licensed premises, or

(4) If the holder of the license shall misrepresent any material fact as to the kind of business in such holder's return or any other fact necessary or proper to determine the amount of license fee to be paid.

(b) When the Mayor has probable cause to believe that a license should be revoked for any of the causes enumerated herein, it shall be such official's duty to prefer charges against the holder of such license by filing a statement of such charges against the holder of such license with the city clerk. The charges shall be in writing and each charge shall be clearly set out. Within three (3) days after the filing of said charges with the council a notice of the filing of said charges and of the time of the hearing thereof shall be mailed to the licensee at the address shown on the license and a hearing before the council shall be held within ten (10) days after the filing of said charges with the council. The evidence shall be transcribed and the action and decision of the council on the charges shall be reduced to writing and recorded in the minute book.

SECTION XIV: PENALTIES.

A penalty of five (5) per cent of the tax due will be added to all the aforementioned taxes unpaid on the first day of June of each year, and an additional five (5) per cent penalty will be added to all such taxes unpaid on the first day of July of each year. Each person who has not complied with the provisions of this ordinance prior to the first day of August of each year will be subject to a fine of not less than five dollars (\$5.00), nor more than fifty dollars (\$50.00), per day for each offense, and each day the violation is continued shall constitute a separate offense. These violations shall constitute misdemeanors and be subject to prosecution in any court of competent jurisdiction.

SECTION XV: COLLECTION BY CIVIL ACTION

In addition to the penalties provided in this ordinance for a violation thereof, the tax may be collected from the person from whom the same is due by a civil action in any court of competent jurisdiction in the commonwealth and such recovery shall in no wise relieve said persons from the payment of a fine for engaging in any business, occupation, trade, or profession herein mentioned without a license to do so.

SECTION XVI: LICENSE YEAR.

The license provided herein shall be for the year beginning May first for each year until repealed.

SECTION XVII: LEVY OF LICENSE FEE--RESIDENT.

It shall be unlawful for any person to engage in any business, trade, occupation, vocation, calling or activity mentioned in this ordinance in the city until such person has first paid the amount of license fee to the city clerk and has obtained a license as hereinafter specified and required.

SECTION XVIII: LEVY OF LICENSE TAXES--NON RESIDENT.

(a) It shall be unlawful for any person who is a nonresident of the city or who has a place of business outside the city limits, to engage in any business, occupation, trade, vocation, calling or activity mentioned in this ordinance in the city until such person has first paid the amount of the license to the city clerk and has obtained a license as herein specified.

(b) Such license shall be required of any person residing outside the city or having a place of business outside the city limits if such person shall engage with continued activity in any business, trade, occupation, vocation, calling or activity mentioned in this ordinance in the city, and who actually solicits and accepts business by holding such person's self out as engaging in such business, trade, occupation, vocation, calling or activity the same as any person residing in the city and engaged in a similar business, trade, occupation, vocation calling or activity.

SECTION XIX: SPECIFIED MINIMUMS IN EXCESS OF \$ 100.00

The following specified minimum licenses shall apply to the types of businesses listed.

(1) BILLIARD PARLORS OR POOL ROOM shall pay a minimum of \$250.00.

(2) PAWNBROKERS shall pay a minimum of \$300.00.

(3) TRANSIENT MERCHANTS shall pay \$ 50.00 per week for each week, or portion thereof, for business conducted within the city, or \$ 500.00 for an annual license.

SECTION XX: EMPLOYERS TO WITHHOLD EMPLOYEE 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 compensation due each employee beginning on the first

day of May of each year. The payments required to be made on account of such deductions by employers shall be made to the City Clerk and tax collector for the periods ending on June thirtieth, September thirtieth, December thirty-first, and March thirty-first, on or before the last day of the month next following said period. It is the intention of this article to establish a license period from May first to April thirtieth of each year. However, the failure or omission 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 herein or with any regulations promulgated hereunder.

(B) An employer shall file in the office of the City Clerk a return by January thirty-first of each year, on a form acceptable to such officer, showing the gross amount of compensation of each employee, the amount of the license fees deducted and paid by the employer and the last known address of each such employee, during all or any part of the preceding calendar year.

SECTION XXI: RETURNS TO BE FILED BY EMPLOYEES.

When a return in form and substance satisfactory to the City Clerk 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 Clerk on or before January thirty-first of each year showing in said return such employee's gross receipts subject to license fees during all or any part of the preceding calendar year. Such return shall show such other pertinent information as may be required by the City Clerk. Each person making a return required by this section shall, at the time of filing thereof, pay to the City Clerk any unpaid license fees that were due on June thirtieth, September thirtieth, December thirty-first and March thirty-first as well as any penalties imposed under section XXII of this ordinance.

SECTION XXII: INTEREST AND PENALTIES.

(A) All license fees imposed by this ordinance which remain unpaid after they become due shall bear interest at the rate of six (6) per cent 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 ten (10) per cent of the amount of such unpaid license fees. Any person who fails or refuses to withhold any license fee payable under this ordinance, or who fails to pay such fees after withholding the same, to the City Clerk at the time it is due provided under the terms of section XX, shall become liable to the city for such fees, as well as for the interest thereon at the rate of six (6) per cent per annum and for the aforesaid penalty.

(B) Any person or employer who shall fail, neglect or refuse to make any return required by this article or any licensee who shall fail, neglect or refuse to pay a license fee, or any employer who shall fail to withhold said license fees or to pay over to the city such license fees, penalties or interest imposed by this ordinance, or any person who shall refuse to permit the City Clerk to examine such person's 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 net profits or compensation in order to avoid any part of the license fee, shall, upon conviction, be subject to punishment as provided in section 1-8 of the Mayfield Code. Such criminal penalties shall be in addition to the penalties imposed under subsection (A) of this section.

SECTION XXIII: NO INTENTION OF UNLAWFUL OR UNFAIR IMPOSITION OF LICENSE FEE.

It is not the intention of the city to impose and require an occupational license fee for any person, occupation, trade, or profession prohibited by law or ordinance, nor is it the intention of the city to impose an unfair or exorbitant fee upon taxpayers. Therefore by and through this ordinance, should the combined revenues generated from the payroll tax and business licences during the Fiscal year 1994-95 exceed \$ 2,100,000, the City Clerk is hereby ordered to credit to each licensee's account an apportioned amount of all funds generated in excess of said \$ 2,100,000, to be applied to the 1995-96 license year.

SECTION XXIV:

NOW, THEREFORE; It is hereby ordained by the COMMON COUNCIL OF THE CITY OF MAYFIELD, KENTUCKY, that the ordinance herein described shall be adopted by and for THE CITY OF MAYFIELD.

SECTION XXV:

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS ADOPTION AND APPROVAL, AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH ARE HEREBY REPEALED AND HELD FOR NAUGHT.

Approved on first reading on the 12th day of September, 1994.

Adopted on second reading on the 10th day of October, 1994.

ATTEST:

APPROVED:

MIKE CURRY, CITY CLERK
CITY OF MAYFIELD, KY

ARTHUR BYRN, MAYOR
CITY OF MAYFIELD, KY