ORDINANCE 2007-12-01

AN ORDINANCE OF THE CITY OF BELLEVUE, CAMPBELL COUNTY, KENTUCKY IMPOSING OCCUPATIONAL LICENSE FEES AND RELATED REGULATIONS ON THOSE ENGAGED IN FRANCHISES, TRADES, OCCUPATIONS, PROFESSIONS AND BUSINESS IN THE CITY AND REPEALING SECTION 110 OF THE BELLEVUE CODE OF ORDINANCES IN ITS ENTIRETY AND REPLACING IT HEREWITH.

WHEREAS, the Bellevue City Council desires to comply with the requirements of KRS 67.750 to 67.795 and deems it necessary and desirable that certain changes be made to the existing ordinances imposing occupational license fees and business regulatory fees and related regulations on persons engaged in franchises, trades, occupations, professions and other businesses in the City; and deems it is more expeditious to repeal the existing Section 110 of the Bellevue Code of Ordinances in its entirety, and impose by this Ordinance the updated regulatory provisions and new procedures for the assessment, payment, collection and administration of the occupational license fee and other business regulation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLEVUE, KENTUCKY AS FOLLOWS:

SECTION 1. DEFINITIONS.

As used herein, the following words and phrases have the meanings indicated unless the context clearly indicates or requires a different meaning. All definitions are intended to be consistent with KRS 67.750 to 67.790.

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

Business. Any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit, specifically including any activity within the meaning, scope and context of KRS 92.280, KRS 92.281 and Section 181 of the Kentucky Constitution. Business shall also specifically but not exclusively include the rental offering of any property, real or personal, having a site in the city. Business shall not include the usual activities of boards of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions as recognized by the Internal Revenue Service. 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.

Calendar Quarter. Any quarter of a calendar year ending on March 31, June30, September 30 or December 31 thereof.

City. The City of Bellevue, Kentucky.

Compensation. Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services preformed by an employee, which are required to be reported for federal income tax purposes and adjusted to include the following:

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

(2) Include any amounts contributed by an employee to any welfare benefit, fringe benefit or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.

Conclusion of the Federal Audit. The date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable.

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

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

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

(2) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" means such person.

Final Determination of the Federal Audit. The revenue agents report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

Fiscal Year. An accounting period of 12 months ending on the last day of any month other than December.

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

(a) Sales and excise taxes paid;
(b) Returned goods and allowances; and
(c) Exempt licensed sales of alcoholic beverages under the laws of the Commonwealth of Kentucky.

Internal Revenue code. The internal Revenue Code in effect on December 31, of the year in which the tax is due, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, of the year in which the tax is due, that would otherwise terminate.

Licensee. Any person required to file a return or to apply for or obtain an occupational license under this chapter.

Person. Every natural person, whether a resident or non-resident of the city, co-partnership, fiduciary, association, or corporation. Whenever the word "person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, as applied to corporations, shall mean the officers and directors thereof.

Real Property. All types of real estate including commercial property, residential property, and farm property.\

Regulatory Business License. A license required by the City of Bellevue, pursuant to the police power thereof, for the purpose of regulating business activities and operations within the City of Bellevue.

Return or Report. Any properly completed and , if required, signed form, statement, certification, declaration, or any other document permitting or required to be submitted or filed with the City.

Sales Revenue. Receipts from the sale, lease, or rental of goods, services or property.

Tax District. Any city of the first through fifth class, county, urban county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license fees.

Taxable Gross Receipts. In case of a business entity have payroll or sales revenues only within the City means Gross Receipts as defined above.

Taxable Year. The calendar year or fiscal year ending during the calendar year, upon the basis of which Gross Receipts are computed.

SECTION 2. PURPOSE.

The purpose of this ordinance is to impose an occupational license fee on those engaged in franchises, trades, occupations, professions and other businesses in the City and provide the necessary ancillary regulations for enforcement and administration.

SECTION 3. LEVY AND IMPOSITION

Subject to the provisions of KRS 67.750 and 67.795, and except as otherwise provided herein, an Occupational License Fee is hereby levied and imposed upon all persons and business entities engaged in any franchise, trade, occupation, profession or other businesses in the City, for the privilege of that engagement.

SECTION 4. OCCUPATIONAL LICENSE APPLICATION AND LICENSE REQUIRED.

(A) Every Person and Business Entity operating or engaged in any business, franchise, trade, occupation, or profession in the City and every Employer required by this ordinance or statute to withhold the payroll fee specified herein, shall apply for and obtain an occupation license before commencing business or work activity in the City.

(B) Each applicant shall complete the City's application for an Occupational/ Business License and pay the application fee of sixty dollars ($60). No application for an occupational license shall be accepted or received by the Clerk/Treasurer without payment of the application fee, and payment of any occupational license fee or business regulatory license fee then or otherwise due from the applicant.

(C) Licensees shall notify the City of any changes in address, cessation of business, or other changes rendering the information previously supplied to the city on the occupational license application inaccurate.

(D) The form and content of the annual Occupational/Business License required by this ordinance and the application for it shall be determined by the City Clerk/Treasurer.

(E) All applications for an occupational business license or a regulatory business license shall be reviewed by the City Clerk/Treasurer and may be referred thereby to the City Administrative Officer or other City employees or officers

to insure that the applicant is in compliance with all regulatory requirements of the City or other applicable subdivisions of the Commonwealth of Kentucky.

SECTION 5. PROHIBITIONS.

Nobody shall conspire, cause, permit, promote, allow aid, assist, encourage or engage in any franchise, trade, occupation, profession or other business in the City for which the annual Occupational License has not been issued.

SECTION 6. OCCUPATIONAL LICENSE FEE PAYMENT REQUIRED AND LICENSE FEE SCHEDULE.

(A) Except as provided in Section 7 of this ordinance, 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 fee for the privilege of engaging in such activities within the City. The occupational license fee shall be measured as follows:

(1) The occupational license fee for employees shall be 2.50% of all wages and compensation paid or payable in the city for work done or services performed or rendered in the City by every resident and nonresident who is an employee;

(2) The occupational license fee on Gross Receipts shall be as follows:

(A) License fees for trades, businesses, and occupations in the city shall be paid based upon the gross receipts of the trade, business, or occupation.

(B) Computation shall be made upon forms provided by the City Clerk/Treasurer as follows:

(1) Determine the gross receipts from the preceding calendar year,

(2) (a) For the first $99,999.99 of gross receipts, or portions thereof, the license rate shall be $60.00;

(b) For gross receipts of $100,000.00 to $199,999.99, the license rate shall be $95.00;

(c) For gross receipts of $200,000.00 to $299,999.99, the license rate shall be $195.00;

(d) For gross receipts of $300,000.00 to $399,999.99, the license rate shall be $290.00;

(e) For gross receipts of $400,000.00 to $499,999.99, the license rate shall be $450.00;

(f) For gross receipts of $500,000.00 to $699,999.99, the license rate shall be $755,00;

(g) For gross receipts of $700,000.00 to $999,999.99, the license rate shall be $1,040.00;

(h) For gross receipts of $1,000,000.00 to $2,999,999.99, the license rate shall be $1,925.00;

(i) For gross receipts of $3,000,000.00 to $4,999,999.99, the license rate shall be $3,025.00;

(j) For gross receipts of $5,000,000.00 to $7,499,999.99, the license rate shall be $4,125.00;

(k) For gross receipts of $7,500,000.00 to $9,999,999.99, the license rate shall be $5,225.00;

(1) For gross receipts of $10,000,000.00 and over, the license rate shall be $6,325.00.

(B) The minimum fee liability on Gross Receipts under this ordinance shall be a minimum of sixty dollars ($60.00). The maximum fee shall be six thousand three hundred and twenty-five dollars ($6,325.00).

(C) 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 fee for the period of that taxable year during which the business entity had business activity in the City.

SECTION 7. EXEMPTED ACTIVITIES.

The occupational license fee 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 training, unit training assemblies, annual field training and active duty;

(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 gross receipts 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 gross receipts derived from the manufacturing or trafficking in alcoholic beverages;

(f) Insurance companies incorporated or doing business under the laws of the Commonwealth of Kentucky'

(g) A minister of religion who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its religious doctrines or to administer its rights in public worship, in the performance of one or more of those duties. However, it is not intended to exempt an ordained minister of religion from the necessity of paying a license fee for work done or services performed in the city in activities not connected with his regular duties as a minister of religion.

(h) No church, religious congregation, or religious society of any creed is required to withhold or deduct any sum from the wages, salaries, commissions, or other compensation due by the church, religious congregation, or religious society to its employees as salaries, wages, commissions, or other compensation. However, this failure to so withhold by such employers shall not relieve the employees of the churches, religious congregations, or religious societies from the payment of license fees required by this subchapter.

(i) The provisions of this subchapter shall not apply to any business, occupation, or profession which is exempt from municipal licensing or license taxes pursuant to state or federal law.

(j) The provisions of this subchapter shall not apply to vendors participating in flea market events sponsored by any non-profit, charitable organization with 501 (c) (3) tax-exempt status as designated by the Internal Revenue Service, located within the city, where such event is held entirely upon or within property owned or controlled by such non-profit, charitable organization. This exemption shall only apply to one flea market event per year for each non-profit, charitable organization located within the city sponsoring the event. The event shall not exceed one calendar day in duration. The non-profit, charitable organization sponsoring the event shall comply with § 118.02 that requires a yard sale permit.

(k) Any usual activities of boards of trade, chambers of commerce, trade associations or unions, community chest funds or foundations, corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purpose, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, educational, or fraternal purposes where no part of the income or receipts of such units, groups, or associations insures to the benefit of any private shareholder or individual. To qualify for this exemption the organization must submit satisfactory proof of their exempt status for federal income tax purposes. If any part of the earnings of such business inures to the benefit of any person,

it shall be sufficient to defeat the exemption. If an organization earns "unrelated business income" as defined and administered in §511 of the Internal Revenue Code, the occupational license fee shall be assessed on the "unrelated business income."

SECTION 8. APPORTIONMENT OF GROSS RECEIPTS IN CALCULATING FEE DUE

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

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

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

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

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

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

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

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

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

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

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

(1) Separate accounting;

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

(3) The inclusion of one or more additional factors which will fairly represent the business entity's business activity in the city; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of gross receipts. The City must approve any alternate apportionment method prior to its implementation by the business entity. Once an alternate apportionment method is approved by the city, the business entity must apply such apportionment scheme in all future tax years, unless otherwise directed by the City.

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

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

(G) If a business entity makes, or is required to make, a federal income tax return, the occupational license fee 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.

(H) 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 it charter during any taxable year, the dissolution, cessation or business,

withdrawal, or loss or surrender of charter shall not defeat or excuse the requirement to file returns nor the assessment and collection any occupational license fee for the period of that taxable year during which the business entity had business activity in the City.

SECTION 9. EMPLOYERS SHALL WITHHOLD FEE.

(A) Each employer who employs one or more person(s) working within the City is required to obtain an occupational license and, if applicable, shall complete and execute the City's Application for Occupational License on behalf of each of its employees. The employee is not required to apply with the City unless the employee has earned income other than "wages and other compensation."

(B) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license fee calculated under Section 6 of this ordinance.

(C) Every employer required to deduct and withhold a fee 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 fee 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.

(D) 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.

(E) 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.

(F) Every employer required to deduct and withhold a fees 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 fee 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.

(G) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational

license fee deducted by the employer from the compensation paid to the employee for payment to the city during the preceding calendar year.

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

(I) 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 fee 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 fee becomes or became obligated.

(J) Not withstanding subsections (H) and (I) of this section, every employee receiving compensation in the city subject to the fee imposed under Section (6) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the fee 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.

SECTION 10. GROSS RECEIPT RETURNS REQUIRED.

(A) Unless otherwise specified in this ordinance, every business entity and employer required to have an occupational license from the City shall provide to the City all information necessary to assess the appropriate occupational license fee. All business entity returns made for the preceding taxable year shall be made not latter than April 15, 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. The returns shall be made on the forms available from the office of the City Clerk/Treasurer.

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its Occupational License Return with the City. Whenever, at the discretion of the City, it is necessary to examine the federal income tax return of any business entity 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 or adjustments made by the federal government and/or other financial documents maintained by the business entity.

(C) Every business entity subject to an occupational license fee governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules and regulations 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 fee liability of the business entity.

(D) The City may require, for the purpose of ascertaining the correctness of any return or for the purpose 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 of the business entity or on the premises.

(E) The full amount of the unpaid fee payable by any person or business entity, as appears from the face of the return and without regard to any extension of time for filing the return, shall be paid to the City at the time the occupational license fee return is filed with the City.

(F) Every business entity making payments of six hundred dollars ($600) or more to persons other than employees for services performed within the City are responsible for maintaining records of those payments and for completing Form 1099 SF, Statement of Non-Employee Compensation, 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.

(G) If the time for filing a return is extended, the business entity shall pay, as part of the fee, an amount equal to twelve percent (12%) per annum simple interest on the fee shown due on the return, but not previously paid, from the time the fee was due until the return is actually filed and the fee paid to the City. Any fraction of a month shall count as an entire month.

SECTION 11. EXTENSIONS OF FILING TIME

The City may grant any business entity an extension of not more than six months for filing its return, unless a longer extension has been granted by the Internal Revenue Service or a longer extension is agreed to by the City and the business entity. An extension may only be granted if the business entity, on or before the date prescribed for payment of the occupational license fee, requests the extension and pays the amount properly estimated as its fee. All requests for an extension shall be made in writing.

SECTION 12. REFUND PROCEDURES.

(A) Where there has been an overpayment of fee due under Section 6 of this ordinance, a refund or credit shall be made to the employer, but only to the extent of the overpayment and only if a written application for refund or credit is received by the City within two years from the date the overpayment was originally made.

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

(C) Where there has been an overpayment of fee under Section 6 of this ordinance, a refund or credit shall be made to any person or business entity to the extent of the overpayment only if a written application for refund or credit is received by the City form the person or business entity within two years from the date the overpayment was made. No refund shall be made of any fee paid unless a complete return is filed as required by Section 10 of this ordinance.

SECTION 13. AUDIT PROVISIONS.

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

(1) In case of a failure to file a return or of a fraudulent return, the city may assess the additional fee at any time and there shall be no time limitations for bringing an action under this chapter.

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

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

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

granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

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

(C) In additional to all other remedies available to the City, the City may initiate a civil action for the collection of any additional unpaid fee within the times prescribed (A) of this section.

SECTION 14. ADMINISTRATIVE PROVISIONS.

(A) The City Clerk/Treasurer or any employee or agent designated thereby is authorized to examine the books, papers and records of any employer or supposed employer, person, or of any business entity or supposed business entity in order to determine the accuracy of the any return made, or if no return was made to ascertain the amount of occupational fee due under the term of this ordinance. Each such employer or supposed employer or business entity or supposed business entity shall give to the Clerk/Treasurer or his duly authorized agent or employee the means, facilities, and opportunities of the making of such exanimation and investigation. The Clerk/Treasurer is hereby authorized to examine any person under oath concerning any compensation or gross receipt which was shown or should have been shown in a return and may compel the production of books, papers, records, and the attendance of all persons, whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts or compensation, to the extent that any officer empowered to administer oaths in this Commonwealth is permitted to so order.

(B) No suit shall be maintained in any court to restrain or delay the collection or payment of the fee levied by this chapter.

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

(1) In any case where the assessment period contained in Section 10 has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.

(2) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

(D) For the purposes of this subsection (E) 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.

(E) The authority to refund or credit overpayments of fees collected pursuant to this chapter is vested exclusively in the City.

(F) In order to reduce administrative costs and to minimize paperwork for employers, employees, and business entities, this ordinance shall be administered in conjunction any of the City's business regulations or police powers as maybe deemed necessary and efficient.

SECTION 15. ENFORCEMENT.

The City Clerk/Treasurer is charged with the enforcement of the provisions of this ordinance and is empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to provisions for the re-examination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the rules and regulations promulgated by it shall be binding on all licensees and employers affected. It shall be the duty of the City Clerk-Treasurer to collect and receive all license fees imposed by this subchapter and to keep records showing the amounts received by him from each employer. The City may contract by inter-local agreement to have any other governmental entity administer and collect the occupational license fee due under this ordinance.

SECTION 16. FINANCIAL INFORMATION SHALL REMAIN CONFIDENTIAL.

(A) No present or former employee of the City 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 scheduled, returns, or reports required to be field with the City 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 law, or in any way made a matter for 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 city form testifying in any court or by deposition, or from introducing as evidence returns or reports filed with the City, in an action for violation of a tax or fee law of the City or other tax district or in any action challenging the City's tax or fee laws or in any action in which the income of the business entity is a relevant issue at trial.

(B) The City reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the City if the commissioner of Revenue of the Commonwealth of Kentucky grants to the City the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Furthermore, that the City may publish statistics based on such information in such a manner as not to reveal data respecting gross receipts or compensation of any person or business entity.

(C) In addition, the City is empowered to execute similar reciprocity agreements as described in division (B) of this section with any other taxing entity should there be a

need for exchange of information to effect diligent enforcement of this subsection or the ordinances of the other taxing entity.

SECTION 17. USE OF OCCUPATIONAL LICENSE FEE.

All money derived from the Occupational license fees under the provisions of this ordinance shall be paid to the City Clerk-Treasurer, placed to the credit of the General Fund of the city, and be used and expended in defraying the current, general, and incidental expenses of the City.

SECTION 18. OCCUPATIONAL LICENSE FEE PENALTIES.

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

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

(2) Fails to pay the fee 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 fee due; however, the penalty shall not be less than twenty-five dollars ($25).

(B) Every employer who fails to file a return or pay the fee on or before the time prescribed under Section 10 above may be subject to a penalty in an amount equal to five percent (5%) of the fee due each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total fee due; however, the penalty shall not be less than twenty-five dollars ($25).

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

(D) Every fee imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the fee is due and payable, a personal debt of the taxpayer to the City.

(E) The City may enforce the collection of the occupational fee due under Section 6 of this ordinance and any fees, penalties, and interest as provided in subsections (A) through (D) 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 enforcing any provision of this ordinance.

(F) 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 fees owing or collected, with the intent to evade payment of the fee or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(G) 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.

(H) 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 his ordinance or by the rules of the City or by written request for information to the business entity by the City.

SECTION 19. OTHER TAXES AND FEES TO BE PAID.

The occupational license fee prescribed in this ordinance is not in lieu of, but are in addition to, any taxes and fees required to be paid under any other ordinance of the city.

SECTION 20. REGULATORY BUSINESS AND OCCUPATIONAL REGISTRATION AND REGULATION

(A) Any Person or Business Entity engaged in any franchise, trade, occupation profession or other business in the City shall file an Occupational/ Business Regulatory License application with the City Clerk-Treasurer and must first obtain an annual License before commencing or continuing business in the City.

(B) This Section shall be administered by the City Clerk/Treasurer, under the direction of the Mayor. The City Clerk/Treasurer with the approval of the Mayor shall have authority to issue and promulgate such regulations as he may consider necessary for the administration of this subchapter, provided such regulations are not inconsistent with the provisions of this subchapter; and provided further that such regulations when promulgated are approved by the City Council. No license shall be issued for any unlawful activity, or for any business that the City Clerk/Treasurer with the approval of the Mayor, shall consider to be detrimental 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 City Council.

(C) If any business entity, person, association, firm or corporation should fail to comply this ordinance, the City Clerk/Treasurer shall report in writing the names, address, and nature of the trade, profession, occupation, or business being carried on by such delinquents to the Mayor.

(D) Provided that an applicant is not in violation of any City ordinance and not otherwise operating in violation of any law, a license certificate shall be issued to each

person or business entity filing a business license application and paying all fees and occupational license fees due under this or any other City ordinance. 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 the kind of business is not materially changed and may be transferred to cover another location if a taxpayer moves his place of business. Each taxpayer shall display the license certificate in a conspicuous place in each licensed place of business. The licenses issued under the provisions of this subchapter shall be for the same license year provided for under Section 10 of this Ordinance.

SECTION 21. REVOCATION OR SUSPENSION OF OCCUPATIONAL AND BUSINESS LICENSES.

(A) Any Occupational license or other business license issued under this ordinance, or any other authority of the City, may after notice to the holder thereof, and after a hearing before City Council as hereinafter provided, be revoked or suspended by the City Counsel for the following reasons:

(1) If any person licensed under this ordinance is convicted of a felony, a misdemeanor for which a jail sentience may be imposed, any other crime in which moral turpitude is involved, or any other crime which directly relates to the business, occupation, or profession of which a license was issued pursuant to the terms of this ordinance. However, in making the decision to revoke or suspend the license, the City Counsel shall consider:

(a) The nature or seriousness of the crime for which the person was convicted;
(b) The relationship of the crime to the purpose of regulating the business, occupation, or profession for which the license was issued;
(c) The relationship of the crime to the ability, capacity and fitness required to perform the duties and to discharge the responsibilities of the operation of the business, occupation, or profession for which the license was issued; and
(d) The extent to which the person may have been successfully rehabilitated.

(2) If there shall occur in, on, or at the premises covered by the license any constitution 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 facts as to the kind of business in his application or return or other fact necessary or proper to determine the regulatory fee to be paid.

(5) If the holder of the license shall refuse right of entry to the building inspector or other city officer or employee requiring entry for the purpose of conducting inspection as specified or permitted by ordinance; or

(6) If there shall occur in, on, or at the premises covered by the license any violation of any city or state code or ordinance or if the license holder suffers or permits any violation of any City or state code or ordinance in, on, or at the licensed premises.

(B) When the Mayor or City Administrative Officer has probable cause to believe that a license should be revoked for any of the causes enumerated herein, he shall prefer charges against the holder of the license with the City Clerk-Treasurer. The charges shall be in writing and each charge shall be clearly set out. Within three days after the filing of the charges and of the time of the hearing thereof shall be mailed to the licensee at he address shown on the license and a hearing before the City Council shall be held within then days after the filing of the 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 22. LICENSEES' BUILDINGS AND PREMISES TO COMPLY WITH STATE AND LOCAL REQUIREMENTS AND LAWS.

No license shall be issued for the conduct of any business, and no permit shall be issued for any thing, or act, if the premises and building to be used for the purpose do not fully comply with all applicable state statutes and ordinances of the city. No license or permit shall be issued for the conduct of any business or performance of any act which would involve a violation of the zoning ordinance of the city or otherwise constitute a nuisance.

SECTION 23. DUTY TO ALLOW INSPECTIONS.

(A) Whenever inspections of the premises used for, or in connection with, the operation of a licensed business or occupation are provided for or required by ordinance, or are reasonably necessary to secure compliance with any ordinance provision or to detect violations thereof, it shall be the duty of the licensee, or the person in charge of the remises to be inspected, to admit thereto for the purpose of making the inspection any officer or employee of the city who is authorized or directed to make such inspection at any reasonable time that admission requested.

(B) Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with an ordinance, provision or to detect violations thereof it shall be the duty of the licensee to give to any authorized officer or employee of the City requesting the same sufficient samples of such material or commodity for such analysis.

(c) In addition to any other penalty which may be provided, the Mayor may revoke the license of any licensed proprietor of any licensed business in the City who

refuses to permit any such officer or employee who is authorized to make such inspection or take such inspection or take such sample to make the inspection, or take an adequate sample of the commodity, or who interferes with such officer or employee while in the performance of his duty in making such inspection. No license shall be revoked for such cause unless written demand is made upon the licensee or person in charge of the premises, in the name of the City, stating that such inspection or sample is desired at the time it is sought to make the inspection or obtain the sample.

SECTION 24. REGULATORY LICENSE FEE SCHEDULE.

(A) In order to defray the costs to the City of inspecting, regulating and policing certain business activities and occupations within the City, each person or business entity specified in this section shall first pay the following annual regulatory and license fees prior to commencement of business. The amounts to be paid by persons, business entities, associations of persons, firms, and corporations carrying on any of the following trades, occupations, or professions, or engaging in any of the following businesses in the city, unless otherwise specified shall be as follows:

Trade, Occupation or Profession	Fee per Year
(1) Coin-operated amusement devices, as defined in IRS 137.010; pursuant to the authority of KRS 137.410 there is hereby established a license fee upon each coin-operated amusement device, per year per device.	$10.00 payable by February 1st each year.
(2) Go-go or striptease dancers	$5,000.00 payable by April 15th each year.
(3) Rental property:	
(a) Business or office units, each	$40.00 payable April 15th each year.
(b) Residential units, each	$40.00 April 15th each year.

(i) Exception: If an owner of a building with two or more residential units therein is the occupant of one unit in that building, no fee is required for the unit in which such owner resides.

(ii) Residential rental unit property owners will not be subject to the criminal prosecution provided in Section 25 for violation of this Section. They will be subject to the civil penalties provided for in Bellevue's Code of Ordinances.

(B) If the Fees in this Section remain unpaid after the date on which they are due, a total penalty shall be levied that shall not exceed twenty-five percent (25%) of the total fee due; however, the penalty shall not be less than twenty-five dollars ($25).

(C) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the fee, an amount equal to twelve percent (12%) per annum simple interest on the fee due, but not previously paid, from the time the fee was due until the fee is paid to the City.

SECTION 25. CRIMINAL PENALTY.

Except as otherwise provided, whoever shall violate Sections 20, 22, 23 and 24 of this ordinance shall be guilty of a misdemeanor and shall, upon conviction of violation of this subchapter be subject to a fine or penalty not less than $50.00 nor more than $500.00, imprisoned not more than thirty (30) days, or both for each offense. Such criminal penalties shall be in addition to other penalties imposed by law.

SECTION 26. SEVERABILITY.

Each section and each provision of each section of this ordinance is 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 court of law to be unconstitutional or invalid for any reason, such holding shall not effect 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.

SECTION 27. EFFECTIVE DATE.

This ordinance shall be effective at midnight on the evening of December 31, 2007, after the enactment and publication thereof, according to law.

SECTION 28. PUBLICATION.

This ordinance shall be published in summary pursuant to KRS 83A060(9).

_____
John D. Meyer, Mayor

ATTEST:

_____
Mary H. Scott, City Clerk

First Reading: _____

Second Reading: _____

Publication: _____