

AN ORDINANCE LEVYING AND IMPOSING LICENSE FEES FOR PRIVILEGE OF ENGAGING IN BUSINESSES, OCCUPATIONS, TRADES AND PROFESSIONS IN THE CITY OF RUSSELLVILLE, KENTUCKY, MEASURED BY ONE PER CENT (1%) OF THE AMOUNTS EARNED WITHIN THE CITY OF RUSSELLVILLE, KENTUCKY, ON AND AFTER THE FIRST DAY OF JULY 1970; DEFINING WORDS, PHRASES AND TERMS; PRESCRIBING REGULATIONS AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT AND COLLECTION OF SUCH LICENSE FEES; REQUIRING THE FILLING OF RETURNS AND THE GIVING OF INFORMATION BY ALL THOSE SUBJECT TO SUCH LICENSE TAX; PROVIDING THAT THE LICENSE FEES COLLECTED SHALL BE PAID INTO THE GENERAL FUND OF THE CITY OF RUSSELLVILLE FOR PAYMENT OF GENERAL GOVERNMENTAL EXPENSES AND FOR CAPITAL IMPROVEMENTS AS MAY BE DIRECTED BY THE CITY COUNCIL; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; AND PROVIDING A SEVERABILITY CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RUSSELLVILLE, KENTUCKY.

SECTION 1. LICENSE FEES: ON WHOM IMPOSED.

There is hereby levied and imposed an annual license fee upon all persons, associations, corporations or other entity in any business, occupation, trade, profession or other activity in the City of Russellville, Kentucky, for the privilege of engaging in such business, occupation, trade, profession or other activity, which license fee shall be measured by and be equal to one per cent (1%) of the gross salaries, wages, commissions and other compensations earned by such persons 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 on and after the 1st day of July 1970.

Where such salaries, wages, commissions and other compensations or net profits are earned for work done or services performed or rendered both within and without the City, said 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 2. EXEMPTED ACTIVITIES.

No license fee under this ordinance shall be required of domestic servants employed in private homes.

SECTION 3. DEFINITIONS

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

- (a) "Director of Finance"--The Director of Finance of the City of Russellville, Kentucky.
- (b) "Treasurer"--Treasurer of the City of Russellville, Kentucky.
- (c) "City"--City of Russellville, Kentucky.
- (d) "Person"--shall mean any natural person, 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, and as applied to corporations, shall mean the officers and directors thereof.
- (e) "Association"--A partnership, limited partnership, joint venture or any other form of unincorporated enterprise, owned or engaged in by two or more persons.
- (f) "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.
- (g) "Occupations, trade, profession or other activity"--shall mean and include 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 of Russellville, Kentucky, by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of the City of Russellville 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 officer or employee, where the services of such official or employee are rendered within the City of Russellville.
- (h) "Employee" shall mean and include any person engaging in or following any trade, occupation, profession or activity within the meaning of sub-section (g) of Section 3 of this ordinance.
- (i) "Employer" shall mean and include any individual, person, partnership, association, corporation, governmental body or unit or administration or agency, or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(j) "Salaries, wages, commission and other compensations" shall mean and include 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. Amount paid to traveling salesmen or other workers as allowance or reimbursement for travel or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to his employer are excluded from the foregoing definition.

(k) "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.

(l) "Licensee" shall mean and include any person required to file a return or to pay a license fee under this ordinance.

(m) The singular shall include the plural and vice versa, and the masculin shall include the feminine and the neuter.

SECTION 4. PAYMENT OF LICENSE FEE--WITHHOLDING AND RETURN

(a) Each employer who employs one or more persons within the City shall deduct monthly, or more often than monthly, at the time of payment thereof, the license fee due from each employee measured by the amount of salaries, wages, commissions, or compensation due by said employer to said employee and shall pay to the Treasurer the amount of license fee so deducted. Beginning with the July-September 1970 quarter, the payment required to be made on account of deduction by employers shall be made quarterly, for the quarterly periods ending March 31, June 30, September 30 and December 31 of each year, on or before the last day of the month next following the quarter of said deduction, to the Treasurer. Employers withholding \$50.00 or more per month shall pay same monthly for the first two months of the quarter and pay the balance due including the third month of the quarter with the quarterly return. Said employer shall annually during the month of January of each year, make a return to the Director of Finance in which is set forth the name and residence address of each employee of said employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensations earned during such preceding year, by each such employee. Said return in January 1971 shall set forth the amounts

so paid during the third and fourth quarters of 1970. Provided, however, that the failure or omission of any employer to deduct each license fee shall not relieve the employee from the payment of such license fee in compliance with such regulations with respect to making returns and payment thereof, as may be fixed in this ordinance or established by the Director of Finance.

(b) Except as provided in subsection (d) for the period from July 1, 1970, through December 31, 1970, each person subject to a license fee imposed by this ordinance shall, on or before the first day of the 5th month following the close of each year, make and file with the Director of Finance, a return, in duplicate, on a form which shall be furnished by or obtainable from the Treasurer, setting forth the aggregate amount of salaries, wages, commissions, and other compensations or net profits during the preceding year. Provided, however, that where the entire license due under this ordinance has been withheld under the provisions hereof, the Director of Finance may waive the filing of said return by said licensee; provided, further, that where the fiscal year of the business, profession or other activity differs from the calendar year and licensee files federal income tax returns for such fiscal year. It is the intent of this ordinance that any license fee paid thereunder during any calendar or fiscal year is for the right to do business for that calendar or fiscal year.

(c) All taxpayers subject to pay an annual license fee on net profits under Section 1 and as defined in section 3 (k) shall in April, July, October and January pay to the Treasurer one per cent (1%) of the net profits for the preceding quarter and such quarterly payments shall be credited on the final annual tax return for the calendar or fiscal year. It is further provided that all taxpayers that purchased a City of Russellville Occupational License as of May 1, 1970 shall be allowed credit not to exceed one-fourth of said license fee for the third and fourth quarters of 1970 and the first quarter of 1971.

(d) For the remainder of the calendar year of 1970 the return and license fee required by subsection (b) shall, for persons filing on a calendar year basis, include the aggregate amount of such income for the period from July 1, through December 31; and shall, for persons filing on a fiscal year basis include the aggregate amount of such income from July 1, 1970, to the date such fiscal year ends, and thereafter said return shall be filed as set forth in subsection (b). For the period of July 1, 1970 through December 31, 1970 the taxpayer shall have the option of computing the tax due on the basis on one-half of his total income for the year 1970.

(e) The Director of Finance shall have the authority to extend the filing of said returns in his discretion. Such extension shall be upon the

written request of the licensee. Provided, however, that any balance unpaid when payment is due under the terms of this ordinance shall bear interest at the rate of six (6%) per cent per annum until paid.

SECTION 5. RECORDS OF COLLECTION.

It shall be the duty of the Director of Finance to Collect, and the Treasurer to receive the license fees imposed by this Ordinance and the Treasurer shall keep the records showing the amount received by him from each licensee and employer and the date of such receipt.

SECTION 6. ENFORCEMENT.

(a) The Director of Finance is hereby charged with the enforcement of provisions of this ordinance, and is hereby empowered to prescribe, adopt and promulgate and enforce rules and regulations relating to any matter and 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 and to which an underpayment or overpayment is claimed or found to have been made and the rules and regulations as promulgated by him shall be binding upon the licensee and employers. Provided, however, all such rules, regulations and decisions shall be subject to the consent and approval of the Mayor.

(b) The Director of Finance, by representatives appointed by him in writing, may examine the books, papers and records of any employee of any licensee or supposed licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee imposed by the terms of this ordinance, when he deems this reasonably necessary for purposes incident to the performance of his duties hereunder. The Director may enforce this right by application to the appropriate court having jurisdiction over these matters.

SECTION 7. PENALTIES.

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 annum and any person who fails to pay such license fee when same shall become due, except as provided in Section 4 (e), shall also be charged a penalty of one (1%) per cent per month or fraction thereof not to exceed ten (10%) per cent of the amount of such unpaid license fee. Any person who shall fail, neglect, or refuse to make any return required by this ordinance or any employer who shall fail to withhold said license fee or to pay over to the City those so withheld under the

terms of this ordinance, or any person who shall refuse to permit the Director of Finance or any agent, employee designated by him in writing, to examine books, records and papers pertaining to information required under this ordinance, or who shall knowingly make any incomplete, false or fraudulent return, or shall attempt to do anything whatever to avoid the full disclosure of the amount of earnings in order to avoid the payment of the whole or any part of the license fee shall become liable to the City for such fees as well as the interest and penalty thereof and shall in addition, upon conviction, be subject to a fine of not less than \$25.00 nor more than \$100.00, or imprisonment for not more than 30 days, or to both such fines and imprisonment, for each offense. Such criminal penalties shall be in addition to the interest and penalties imposed above.

SECTION 8. CONFIDENTIAL INFORMATION.

Any information gained by the Treasurer, Director of Finance, or any other official or agent or employee of the City as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential, except in accordance with proper judicial order, and any person or agent divulging such information shall, upon conviction, be subject to a fine of not less than \$50.00 nor more than \$200.00 or imprisonment not to exceed 60 days, or both, at the discretion of the Court, and shall be dismissed from employment by the City upon conviction. Provided, however, such person may disclose to the Commissioner of Revenue of the State of Kentucky or its duly authorized agent all such information and the right to inspect any of the books and records of the City if said Commissioner of Revenue of the State of Kentucky grants to the City the reciprocal right to obtain information from the files and records from the Department of Revenue of the State of Kentucky and maintains the privileged character of the information so furnished to him.

SECTION 9. COMPUTATION OF PERCENTAGE WHICH THE SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION AND NET PROFITS FOR WORK PERFORMED OR SERVICES RENDERED WITHIN THE CITY BEARS TO THE TOTAL COMPENSATION EARNED, EXCEPTIONS AND RULES AS TO SPECIFIC INCOME.

1. The following money receipts are not deemed to be "salaries, wages, commissions and other compensations and net profits" within the meaning of this ordinance, to wit:

a. Old Age or Retirement payments.

Periodical payments, commonly recognized as old age or retirement pensions, made to persons retired from services after reaching a specified age or after a stated period of employment are not subject to the license fee.

b. Disability, sickness, accident benefits and unemployment compensation.

Payments made to employees by an employer under a disability, sickness and accident plan, are not subject to the license fee. Unemployment compensation payments by the Commonwealth of Kentucky or any other agent are not subject to the license fee.

c. Death Benefits.

Death benefits payable by an employer to the beneficiary of an employee or to his estate, whether payable in a single sum or otherwise, are not subject to the license fee.

d. Benefits arising under Workmen's Compensation Act as compensation for disabilities sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability, are not subject to license fee.

2. Insurance Agents

a. General. Individuals engaged in the sale of insurance may be either employees or independent contractors.

Where the individual is subject to the direct control of another as to the manner of his conduct and is paid a fixed fee, he is considered an employee and the amount of the license shall be withheld at the source.

Where the individual is not under the direct control of another and may conduct the sale as he sees fit, receiving his payment in the form of commission from the sale, he is considered an independent contractor and shall file his own return and make payment as an independent contractor.

b. Commissions subject to license fee.

In determining whether the commissions payable by reasons of the selling of any policy by an agent resulted from work done or services performed or rendered in Russellville, the test shall be the residence of the insured at the time of issuance of the policy, rather than the actual place of solicitation, except where the solicitation is in the City of Russellville and the agent's established place of business is within the City, the commission is subject to the license fee regardless of the residence of the insured.

If an agent has an office outside the City of Russellville as well as office of his own within the City, the commission on policies sold to non-residents, if handled through the outside office, are not subject to a license fee, since under such circumstances, they are not earnings or profits of an independent Russellville business.

c. Group Insurance Commissions.

Commissions paid on the sale of contracts of group insurance are subject if the group is located within the City of Russellville as a unit without regard to the residence of the writing agent.

d. Bonuses and Incentive Payments Subject to License Fees.

That proportionate part of all bonuses and incentive payments received by an Agent, which bears the same ratio to the total amount of bonuses and incentive payments received by him, as the amount of commissions received by him on policies sold to residents, bears to the total amount of commissions received by him on all policies sold, to both residents and non-residents is subject to the license fee.

3. Income Received From Real Estate.

a. The rent received from warehouses, apartment houses, hotels, motels, office buildings and structures rented for any commercial or business operation shall constitute a subject activity, and the net income therefrom is subject to the fee imposed by this ordinance.

b. Rent from single dwellings or single apartments or other rental property not specifically set out above shall not constitute a subject activity and the net income therefrom is not subject to the fee imposed by this ordinance unless the person owning said property is engaged in managing said property for at least 20% of his activity time or the net rents amount to at least 20% of his taxable income under this ordinance then he will be presumed to be engaged in the real estate business.

c. All corporations engaged in the rental of real estate or partnerships organized for that purpose shall be considered to be engaged in a subject activity.

d. When any property falls within the classifications above given, the manner of its acquisition, i.e., purchase, gift, inheritance, fiduciary, or as fiduciary mortgagee in possession etc. does not affect the subjectability of the income derived therefrom.

e. Where the property is located within the City limits, the residence of the beneficiary is immaterial.

4. Trading and Securities.

Where a person engages in buying and selling of stocks, bonds and other types of securities and such transactions are not isolated and few, but are extended so as to constitute an activity, the net profits therefrom including dividends and interest are subject to the license fee.

5. Fiduciary.

A fiduciary is a person who holds in trust property, monies or properties, to which another has a beneficial title or interest or who receives and controls income for another person or persons and where a fiduciary is regularly

engaged in a business or profession as a fiduciary, or engaged in a business or profession and regarded as being incidental or collateral thereto, the income of such fiduciary is subject to the license fee.

6. Independent Contractor.

An independent contractor is a person who, while performing services for another, is not under the direction and control of such other person as to the result to be accomplished by the work as to the details and means by which that result is accomplished, such as authors, professional men, plumbers, electricians, seamstresses, laundresses, tailors, registered nurses. The income received by such persons is subject to this license fee on the net profit.

7. Trusts.

Whenever a trust estate is engaged in enterprise, activity or business, which is productive of income, said activity or business shall be considered subject to the license fee.

8. Capital Gains.

Gains from the sale or exchange of "capital assets" are subject to the license tax to the same extent as taxed under the Internal Revenue Code and losses may be deducted from taxable income under this ordinance.

9. Other Compensation.

- a. Tips received by waiters and others are subject to the license fee and will be reported in the same manner as an independent contractor.
- b. Vacation and holiday benefits are subject to the license fee and tax shall be withheld and paid by the employer.
- c. Payments made to employees by an employer at the time of the voluntary or involuntary separation of the employee from the service of the employer are subject to the license fee and the tax shall be withheld and paid by the employer.

SECTION 10. REPEAL OF EXISTING ORDINANCES.

All ordinances or parts of ordinances in conflict herewith now in effect, requiring the payment of a license fee for the privilege of engaging in any trade, occupation or profession to the extent of said conflict, are hereby repealed.

The provisions of the present Occupational License Ordinance as to coin operated machines, truck unloading, itinerant merchants, peddlers, transient workers, traveling salesmen, musicians, entertainers, circuses, carnivals and all other business activities not covered herein or on which it would be impracticable to collect a percentage license fee, are not repealed.

Nothing in this section is intended to relieve any licensee of any fee or portion of a fee which has accrued and is owed to the City under existing ordinances before their repeal by the terms hereof.

SECTION 11. UNLAWFUL IMPOSITION OF LICENSE.

All monies derived from license fees under the provisions of this ordinance shall be paid to the City Treasurer and placed to the credit of the General Revenue Fund of the City of Russellville and shall be used and expended in defraying current, general and incidental expenses of the City. It is the purpose of this ordinance to provide revenue for necessary capital improvements and the General Fund of the City of Russellville and it is not the intention of the City or of this ordinance to impose and require an occupational license fee prohibited by law.

SECTION 12. SEVERABILITY.

The provisions of this ordinance are severable. If any sentence, clause or part of this ordinance or the application thereof to any particular state of case is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or repeal any of the remaining provisions, sentences, clauses or sections or parts of this ordinance, it being the legislative intent of this body to ordain and enact each provision, paragraph, sentence and part hereof separately and independently of each other.

SECTION 13. The City Council hereby declares an emergency to exist and this ordinance shall become effective immediately upon its passage and publication as provided by law, and it is expressly declared to be the purpose of this ordinance to subject to the license fee set forth herein any and all income as defined herein from and after the first day of July, 1970.

Approved and adopted by roll call vote on this 23rd day of June 1970.

Walter Henderson
Mayor

Attested: M. C. G. Quinn
City Clerk