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CHAPTER 110: OCCUPATIONAL LICENSE TAX

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SENIOR CITIZEN TAX

§ 110.01 DEFINITIONS.

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

BUSINESS. Any enterprise, activity, trade, occupation, profession, or undertaking of any

nature conducted for gain or profit. **BUSINESS** shall not include the usual activities of 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.

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.

COMPENSATION. Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

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

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

CONCLUSION OF 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.

COUNTY. The County of Campbell, Kentucky.

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

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

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, **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, **EMPLOYER** means such person.

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

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

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.

LICENSE INSPECTOR. An employee of the Fiscal Court authorized to administer and enforce the provisions of this chapter.

LICENSEE. Any person required to file a return or to apply for and obtain an occupational license under this subchapter.

NET PROFIT. Gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by

Chapter 1 of the Internal Revenue Code, and adjusted as follows:

(1) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;

(2) Include any amount claimed as a deduction that directly or indirectly is allocable to income that is either exempt from taxation or otherwise not taxed;

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

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

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

PERSON. Every natural person, whether a resident or non-resident of the county, co-partnership, fiduciary, association, or corporation. Whenever the term **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.

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

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

TAX DISTRICT. Any county with the authority to levy net profits or occupational license taxes.

TAXABLE NET PROFIT. In case of a business entity having payroll or sales revenue only within the county means **NET PROFIT** as defined in this section. In case of a business entity having payroll or sales revenue both within and without the county means **NET PROFIT** as defined in this section and as apportioned under § 110.05.

TAXABLE YEAR. The calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed. (Ord. O-5-87, passed 3-4-87; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

§ 110.02 OCCUPATIONAL LICENSE APPLICATION REQUIRED.

Every person and business entity engaged in any business and every employer in the county shall be required to apply for and obtain an occupational license from the county before the commencement of business or in the event of a change of business status. Licensees are required to notify the county of

any changes in address, the cessation of business, or any other changes that render the information supplied to the county in the license application inaccurate.

(Ord. O-24-04, passed 11-17-04)

§ 110.03 PAYMENT OF TAX REQUIRED.

(A) Except as provided in division (A)(2) of this section, every person or business entity engaged in any business for profit and any person or business entity that makes a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the county an annual occupational license tax for the privilege of engaging in such activities within the county. The occupational license tax, shall be measured by 0.05% of:

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

(2) The net profits from business conducted in the county by a resident or nonresident business entity, or \$5, whichever is greater.

(3) The maximum tax liability under this chapter shall be assessed as follows:

(a) For each employee \$19 (0.05% of \$38,667) or as adjusted in accordance with division (A)(6) of this section. This maximum shall be applied by each employer on the compensation by each employee, and deductions shall be made only upon the gross amount of compensation that does not exceed \$38,667 or as adjusted in accordance with division (A)(6) of this section.

(b) For each business entity, there shall be a \$29 maximum liability for the portion of the occupational license tax that is measured by taxable net profits not exceeding \$58,095 (0.05% of \$58,095) or as adjusted in accordance with division (A)(6) of this section.

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

(a) Any bank, trust company,

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

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(b) Any compensation received by members of the state national guard for active duty training, unit training assemblies, and annual field training;

employer for withholding purposes; and

(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 state 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 tax on their net profit derived from the non-public service activities apportioned to the county;

(e) Persons or business entities whose sole business activity is the manufacture of and/or sale of alcoholic beverages. Persons or business entities engaged in the business of manufacturing and/or selling alcoholic beverages are required to file a return but may exclude the portion of their net profit derived from such manufacturing and/or sale of alcoholic beverages;

(f) Insurance companies incorporating under the laws of and doing business in the Commonwealth except as provided for under KRS 91A.080.

(g) Persons or business entities that operate a two-dwelling unit rental property, where the owner occupies one dwelling unit and rents the other dwelling unit that is a part thereof.

(5) In order to reduce administrative costs and to minimize paperwork for employers, employees, and businesses:

(a) Any person may elect to pay an annual fixed amount license tax as set forth in division (A)(2) of this section or as adjusted in accordance with division (A)(6) of this section, payable quarterly, in lieu of reporting and paying the percentage rate on salaries, wages, commissions, and other compensation earned within the county for work done or services performed or rendered in the county. The election shall be made on forms available from the License Inspector, and a copy thereof shall be given to the

(b) Any individual, partnership, professional association, joint venture, or corporation may elect to pay an annual fixed amount license tax as set forth in division (A)(2) of this section or as adjusted in accordance with division (A)(6) of this section, payable in advance in lieu of reporting and paying the percentage rate as provided above on net profits of business, trades, professions, or occupations from activities conducted in the county. The election shall be made on forms available from the License Inspector. Beginning January 1, 2000 and annually thereafter, a person electing to pay the annual fixed amount license tax in advance shall do so prior to April 15 of each year.

(6) Beginning January 1, 2001, the license tax established by this section shall automatically be increased or decreased to reflect business and economic fluctuations. For this purpose, the Consumer Price Index (hereinafter called Index) for Cincinnati, Ohio, published by the Bureau of Labor Statistics of the United States Department of Labor, for the month of January 2000, shall be the base month for calculating adjustments

to the fixed annual license tax. If the Index for January 2001 and for each January of each year thereafter shows an increase or decrease from the purchasing power of the fixed amount license tax in this section as compared in each case to the Index for the month of January 2000, then the fixed annual license tax for the succeeding year shall be adjusted according to the nearest whole dollar. The aforementioned adjustment may be affected by KRS 68.197(10) which became effective July 1, 2005.

(7) If, at the time required for the determination of the license tax adjustment, the Index is no longer published or issued, then the Fiscal Court shall use such other Index as is then generally recognized and accepted for similar determinations of purchasing power.

(Ord. O-5-87, passed 3-4-87; Am. Ord. O-28-99, passed 12-1-99; Am. Ord. O-21-2000, passed 11-15-00; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05; Am. Ord. O-01-08, passed 1-23-08) Penalty, see § 110.99

§ 110.04 EMPLOYERS TO WITHHOLD TAXES AND FILE RETURNS.

(A) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation an occupational license tax calculated under § 110.03 of this chapter imposed against the compensation by the county. Amounts withheld shall be paid to the county in accordance with this chapter.

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

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

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

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

(F) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the county a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either copies of federal form 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 county, shall be submitted.

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

(H) The president, vice-president, secretary, treasurer, or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the county, nor the cessation of holding any corporate office, shall discharge that liability, provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this division unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due.

(I) Notwithstanding divisions (G) and (H) of this section, every employee receiving compensation in the county subject to the tax imposed under § 110.03 of this chapter shall be personally liable for any amount due. In all cases where the employer does not withhold the tax

levied under this chapter from the employee, such employee or employees shall be responsible for filing with the county each quarter in the same manner as if they were the employer or as otherwise required by the License Inspector. If an employer fails to or is not required to withhold, report, or pay the license fee it shall become the duty of the employee to file with the county. The only employer that is not required to withhold, report, and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee can be made quarterly, for the periods ending March 31, June 30, September 30, and December 31 of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28 for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually, during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such

employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

(J) Where there has been an overpayment of tax under § 110.04 of this chapter, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under § 110.04 by the employer. Unless a written application for refund or credit is received by the county from the employer within two years from the date the overpayment was made, no refund or credit shall be allowed. Where there has been an overpayment of the maximum tax due under § 110.04 of this chapter, a refund or credit shall be made to the employee to the extent of overpayment only if a written application for refund is received by the county from the employer or the employee within two years from the date the overpayment was made. All written applications for refunds shall be submitted to the county License Inspector on a form furnished or approved by the county. Refunds may be withheld from an employee until the employer has filed all required forms and provided all required information to the county License Inspector. Overpayments of less than \$5 shall not be refunded.

(K) An employee who has compensation attributable to activities performed outside the county, based on time spent outside the county, whose employer has withheld and remitted to this county the occupational license tax on the compensation attributable to activities performed outside the county, 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 county may confirm with the employer the percentage of time spent outside the county and the amount of compensation attributable to activities performed outside the county prior of approval of the refund. (Ord. O-5-87, passed 3-4-87; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05) Penalty, see § 110.99

preceding taxable year shall be made by April 15 of each year, except returns made on a fiscal year, which shall be made by the 15th day of the fourth month following the close of the fiscal year. The County shall supply blank forms for returns.

§ 110.05 BUSINESS NET PROFIT RETURNS REQUIRED.

(A) All business entity returns for the

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the county. Whenever, in the opinion of the county, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the county 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 county may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to an occupational license tax governed by the provisions of this chapter shall keep records, render under oath statements, make returns, and comply with rules as the county from time to time may prescribe. Whenever the county deems it necessary, the county 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 county deems sufficient to determine the tax liability the business entity.

(D) The county may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a

representative of the business entity or of any other person having knowledge in the premises.

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

(F) Every business entity making payments of \$600 or more to persons or business entities for services performed within the county is responsible for maintaining the records of those payments and for completing IRS Form 1099 on or before February 28 of the year following the close of the calendar year in which such compensation was paid and to remit copies of the IRS Form 1099 or equivalent information to the county on or before February 28 of each year.

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

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

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

(I) Except as provided in division (L) of this section, net profit shall be apportioned as follows:

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

(2) For business entities with sales revenue in more than one tax district, by multiplying the net profit by the sales factor as set forth in division (K) of this section.

(3) For the purposes of divisions (I) through (L) of this section, the business entity shall file an apportionment form provided by the county.

(J) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the county 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 county based on the time the individual's service is performed within the county.

(K) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the county 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 county 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 county regardless of the f.o.b. point or other conditions of the sale; or

(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 county based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the county 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.

(L) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the county, the business entity may petition the county or the county 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 county; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.

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

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

(O) If any business entity dissolves, ceases to operate, or withdraws from the county during any

taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, cessation of business, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of any occupational license tax for the period of that taxable year during which the business entity had business activity in the county.

(P) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this chapter 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.

(Q) Where there has been an overpayment of tax under § 110.05 of this chapter, a refund or credit shall be made to any person or business entity to the extent of overpayment only if a written application for refund or credit is received by the county from the person or business entity within two years from the date the overpayment was made. No refund shall be made of any tax paid unless a complete return is filed as required by § 110.05 of this chapter.

(Ord. O-5-87, passed 3-4-87; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

§ 110.06 INTEREST AND PENALTIES.

(A) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 110.04 of this chapter may be subject to a penalty in the amount of 5% of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

(B) (1) A business entity subject to tax on net profits may be subject to a penalty equal to 5% of the tax due for each calendar month or fraction thereof if the business entity:

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

(b) Fails to pay the tax computed on

the return or report on or before the due date prescribed for payment.

(2) The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

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

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

(E) The county may enforce the collection of the occupational tax due under § 110.03 of this chapter and any taxes, penalties, and interest as provided in divisions (A) through (D) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the county shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this chapter.

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

(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 chapter 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 county and required to be filed with the county by the provisions of this chapter, or by the rules of the county or by written request for information to the business entity by the county.
(Ord. O-5-87, passed 3-4-87; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-22-2003, passed 12-17-03; Am. Ord. O-24-04, passed 11-17-04)

§ 110.07 LOWERING PERCENTAGE RATE OR TAX.

Nothing herein contained shall prevent the Fiscal Court, as determined necessary from time to time for

the benefit of the county, from lowering the percentage rate or fixed amount license tax set out in § 110.02.

(Ord. O-5-87, passed 3-4-87; Am. Ord. O-24-04, passed 11-17-04)

(1) In any case where the assessment period contained in § 110.05 of this chapter has been extended by an agreement between the business

§ 110.08 DUTIES AND INVESTIGATIVE POWERS OF LICENSE INSPECTOR AND ADMINISTRATIVE PROVISIONS.

(A) It shall be the duty of the License Inspector to collect and receive all license taxes imposed by this subchapter and to keep records showing the amounts received by him from each employer or business entity.

(B) The License Inspector or any agent or employee designated by him is hereby authorized to examine the books, papers, and records of any employer or supposed employer or of any business entity or supposed business entity in order to determine accuracy of any return made or, if no return was made, to ascertain the amount of occupational tax due under the terms of this subchapter by such examination. Each such employer or supposed employer or business entity or supposed business entity shall give to the License Inspector or to his duly authorized agent or employee the means, facilities, and opportunities for the making of such examination and investigation. The License Inspector is hereby authorized to examine any person under oath concerning any compensation or net profit which was shown or should have been shown in a return, and to this end he may compel the production of books, papers, records, and the attendance of all persons before him whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts or compensation, to the extent that any officer empowered to administer oaths in the Commonwealth is permitted to so order.

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

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

entity and the county, the limitation contained in this division (D) 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 division (D) or six months from the conclusion of the federal audit, whichever is later.

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

(F) The authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested exclusively in the county. (Ord. O-5-87, passed 3-4-87; Am. Ord. O-24-04, passed 11-17-04)

§ 110.09 ENFORCEMENT OF REGULATIONS.

The License Inspector is hereby charged with the enforcement of the provisions of this subchapter and is hereby empowered to prescribe, adopt, promulgate, and enforce regulations relating to any matter or thing pertaining to the

administration and enforcement of the provisions of this subchapter, including but not limited to provisions of the reexamination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all business entities and employers. (Ord. O-5-87, passed 3-4-87)

§ 110.10 INFORMATION TO BE CONFIDENTIAL.

(A) Any information gained by the License Inspector or any other official or agent or employee of the county as a result of any returns required or authorized by this subchapter, shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. However, the License Inspector may disclose to the Commissioner of Revenue of the State of Kentucky or his duly authorized agent, all such information and rights to inspect any of the books and records of the License Inspector if said Commissioner of Revenue grants to the License Inspector the reciprocal right to obtain information from the files and records of the Department of Revenue and maintains the privileged character of the information

as furnished to him. The county may publish statistics based on such information in such manner as not to reveal data respecting the net profits or compensation of any person or business entity.

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

(C) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax law or in any action challenging a tax district tax law.

(D) Any person violating the provisions of § 110.10 of this chapter by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than \$500, or imprisoned for not longer than six months, or both.

(E) Any person violating the provisions of § 110.10 of this chapter by divulging confidential taxpayer information shall be fined not more than \$1,000, or imprisoned for not longer than one year, or both.

(Ord. O-5-87, passed 3-4-87; Am. Ord. O-24-04, passed 11-17-04) Penalty, see § 110.99

In order to reduce administrative costs and to minimize paperwork for employers, employees, and business entities, this subchapter shall be administered in conjunction with Campbell County

§ 110.11 ADMINISTRATION; COLLECTION OF LICENSE TAXES.

Fiscal Court Amended Ordinance R-34-78 (§§ 110.45 through 110.55) and Ordinance O-24-81 (§§ 110.20 through 110.31) as deemed necessary by the Fiscal Court.
(Ord. O-5-87, passed 3-4-87; Am. Ord. O-24-04, passed 11-17-04)

§ 110.12 DISPOSITION OF REVENUE.

All money derived from license taxes under the provisions of this subchapter shall be paid to the License Inspector and placed to the credit of:

(A) The General Revenue Fund of the county and shall be used and expended in defraying the current, general and incidental expenses of the county.

(B) Appropriation accounts of agencies operating public service programs for individuals aged 60 or older in such amounts as the Fiscal Court may deem necessary.

(C) Said funds shall be allocated to the agencies providing public service programs for individuals aged 60 or older on an annual basis, July 1 through June 30.

(D) Each agency desiring funds shall make an application to the County Fiscal Court no later than March 1 preceding the fiscal year. The application shall be on forms provided by the County Fiscal Court.

(E) Using the information supplied on the application, the County Fiscal Court will allocate funds directly to the agency and contract with those agencies for the services desired.

(F) All funds shall be used solely for services to county residents.
(Ord. O-5-87, passed 3-4-87; Am. Ord. O-24-04, passed 11-17-04)

***MENTAL HEALTH/INTELLECTUAL DISABILITY
TAX***

§ 110.20 DEFINITIONS.

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

BUSINESS. Any enterprise, activity, trade, occupation, profession, or undertaking of any nature conducted for gain or profit. **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.

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.

COMPENSATION. Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

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

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

COUNTY. The County of Campbell County, Kentucky.

EMPLOYEE. Any person who renders services to another person or any business entity for compensation, including an officer of a corporation

and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

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

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, **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, **EMPLOYER** means such person.

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

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

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 and obtain an occupational license under this subchapter.

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

(1) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto

Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;

(2) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;

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

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

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

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

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

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

TAX DISTRICT. Any county with the authority to levy net profits or occupational license taxes. (Ord. O-24-81, passed 12-21-81; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

Every person and business entity engaged in any business and every employer in the county shall be required to apply for and obtain an occupational

§ 110.21 OCCUPATIONAL LICENSE APPLICATION REQUIRED.

license from the county before the commencement of business or in the event of a change of business status. Licensees are required to notify the county of any changes in address, the cessation of business, or any other changes that render the information supplied to the county in the license application inaccurate.

(Ord. O-24-04, passed 11-17-04)

§ 110.22 PAYMENT OF TAX REQUIRED.

(A) Except as provided in division (A)(2) of this section, every person or business entity engaged in any business for profit and any person or business entity that makes a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the county an annual occupational license tax for the privilege of engaging in such activities within the county. The occupational license tax shall be measured by 0.1% of:

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

(2) The net profits from business conducted in the county by a resident or

nonresident business entity, or \$9, whichever is greater.

(3) The maximum tax liability under this chapter shall be assessed as follows:

(a) For each employee \$39 or as adjusted in accordance with division (A)(6) of this section (0.1% of \$38,667). This maximum shall be applied by each employer on the compensation by each employee, and deductions shall be made only upon the gross amount of compensation that does not exceed \$38,667 or as adjusted in accordance with division (A)(6) of this section.

(b) For each business entity, there shall be a \$58 maximum liability for the portion of the occupational license tax that is measured by taxable net profits not exceeding \$58,095 (0.1% of \$58,095) or as adjusted in accordance with division (A)(6) of this section.

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

(a) Any bank, trust company, combined bank and trust company, or trust, banking

and title insurance company organized and doing business in this state, or any savings and loan association whether state or federally chartered;

(b) Any compensation received by members of the state national guard for active duty training, unit training assemblies, and annual field training;

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

(d) Public service corporations that pay an ad valorem tax on property valued and assessed by the state 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 tax on their net profit derived from the non-public service activities apportioned to the county;

(e) Persons or business entities whose sole business activity is the manufacture of and/or sale of alcoholic beverages. Persons or business entities engaged in the business of manufacturing and/or selling alcoholic beverages are required to file a return but may exclude the portion of their net profit derived from such manufacturing and/or sale of alcoholic beverages;

(f) Insurance companies incorporating under the laws of and doing business in the Commonwealth except as provided for under KRS 91A.080.

(g) Persons or business entities that operate a two-dwelling unit rental property, where the owner occupies one dwelling unit and rents the other dwelling unit that is a part thereof.

(5) In order to reduce administrative costs and to minimize paperwork for employers, employees, and businesses:

(a) Any person may elect to pay an annual fixed amount license tax as set forth in division (A)(2) of this section or as adjusted in accordance with division (A)(6) of this section, payable quarterly, in lieu of reporting and paying the percentage rate on salaries, wages, commissions, and other compensation earned

within the county for work done or services performed or rendered in the county. The election shall be made on forms available from the License Inspector, and a copy

thereof shall be given to the employer for withholding purposes; and

(b) Any individual, partnership, professional association, joint venture, or corporation may elect to pay an annual fixed amount license tax as set forth in division (A)(2) of this section or as adjusted in accordance with division (A)(6) of this section, payable in advance in lieu of reporting and paying the percentage rate as provided above on net profits of business, trades, professions, or occupations from activities conducted in the county. The election shall be made on forms available from the License Inspector. Beginning January 1, 2000 and annually thereafter, a person electing to pay the annual fixed amount license tax in advance shall do so prior to April 15 of each year.

(6) Beginning January 1, 2001, the license tax established by this section shall automatically be increased or decreased to reflect business and economic fluctuations. For this purpose, the Consumer Price Index (hereinafter called Index) for Cincinnati, Ohio, published by the Bureau of Labor Statistics of the United States

Department of Labor, for the month of January 2000 shall be the base month for calculating adjustments to the fixed annual license tax. If the Index for January 2001 and for each January of each year thereafter shows an increase or decrease from the purchasing power of the fixed amount license tax in this section as compared in each case to the Index for the month of January 2000 then the fixed annual license tax for the succeeding year shall be adjusted according to the nearest whole dollar. The aforementioned adjustment may be affected by KRS 68.197(10) which became effective July 1, 2005.

(7) If, at the time required for the determination of the license tax adjustment, the Index is no longer published or issued, then the Fiscal Court shall use such other Index as is then generally recognized and accepted for similar determinations of purchasing power.

(Ord. O-24-81, passed 12-21-81; Am. Ord. O-27-99, passed 12-1-99; Am. Ord. O-21-2004, passed 11-15-00; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05; Am. Ord. O-01-08, passed 1-23-08)

§ 110.23 EMPLOYERS TO WITHHOLD TAXES AND FILE RETURNS.

employees. Either copies of federal form W-2 and

(A) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of compensation an occupational license tax calculated under § 110.22 of this chapter imposed against the compensation by the county. Amounts withheld shall be paid to the county in accordance with this chapter.

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

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

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

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

(F) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the county a reconciliation of the occupational license tax withheld where compensation is paid or payable to

W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information, as determined by the county, shall be submitted.

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

(H) The president, vice-president, secretary, treasurer, or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the county, nor the cessation of holding any corporate office, shall discharge that liability, provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally

and individually liable under this division unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due.

(I) Notwithstanding divisions (G) and (H) of this section, every employee receiving compensation in the county subject to the tax imposed under § 110.22 of this chapter shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this chapter from the employee, such employee or employees shall be responsible for filing with the county each quarter in the same manner as if they were the employer or as otherwise required by the License Inspector. If an employer fails to or is not required to withhold, report, or pay the license fee it shall become the duty of the employee to file with the county. The only employer that is not required to withhold, report, and pay the occupational license tax is the Federal Government including the United States Postal

Service. The payment required to be made by an employee can be made quarterly, for the periods ending March 31, June 30, September 30, and December 31 of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28 for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually, during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

outside the county, 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 county may confirm with the employer the

(J) Where there has been an overpayment of tax under § 110.23 of this chapter, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under § 110.23 by the employer. Unless a written application for refund or credit is received by the county from the employer within two years from the date the overpayment was made, no refund or credit shall be allowed. Where there has been an overpayment of the maximum tax due under § 110.23 of this chapter, a refund or credit shall be made to the employee to the extent of overpayment only if a written application for refund is received by the county from the employer or the employee within two years from the date the overpayment was made. All written applications for refunds shall be submitted to the county License Inspector on a form furnished or approved by the county. Refunds may be withheld from an employee until the employer has filed all required forms and provided all required information to the county License Inspector. Overpayments of less than \$5 shall not be refunded.

(K) An employee who has compensation attributable to activities performed outside the county, based on time spent outside the county, whose employer has withheld and remitted to this county the occupational license tax on the compensation attributable to activities performed

percentage of time spent outside the county and the amount of compensation attributable to activities performed outside the county prior of approval of the refund.

(Ord. O-24-81, passed 12-21-81; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

§ 110.24 BUSINESS NET PROFIT RETURNS REQUIRED.

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

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the county. Whenever, in the opinion of the county, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the county 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 county may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to an occupational license tax governed by the provisions of this chapter shall keep records, render under oath statements, make returns, and comply with rules as the county from time to time may prescribe. Whenever the county deems it necessary, the county 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 county deems sufficient to determine the tax liability the business entity.

(D) The county may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

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

(F) Every business entity making payments of \$600 or more to persons or business entities for services performed within the county is responsible for maintaining the records of those payments and for completing IRS Form 1099 on or before February 28 of the year following the close of the calendar year in which such compensation was paid and to remit copies of the IRS Form 1099 or equivalent information to the county on or before February 28 of each year.

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

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

(I) Except as provided in division (L) of this section, net profit shall be apportioned as follows:

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

(2) For business entities with sales revenue in more than one tax district, by multiplying the net profit by the sales factor as set forth in division (K) of this section.

(3) For the purposes of divisions (I) through (L) of this section, the business entity shall file an apportionment form provided by the county.

(J) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the county 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 county based on the time the individual's service is performed within the county.

(K) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the county 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 county 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 county 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 county 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 county based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the county 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.

(L) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the county, the business entity may petition the county or the county 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 county; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.

(M) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the county, the license tax shall be measured by that part of the compensation paid or payable as a result of work

done or service performed or rendered within the county. The license tax shall be computed by obtaining the percentage that the compensation for work performed or services rendered within the county bears to the total wages and compensation paid or payable. In order for the county to verify the accuracy of a taxpayer reported percentages under this division, the taxpayer shall maintain adequate records.

(A) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 110.23 of this chapter may be subject to a penalty in the amount of 5% of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this division shall not exceed 25% of the

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

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

(P) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this chapter 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.

(Q) Where there has been an overpayment of tax under § 110.24 of this chapter, a refund or credit shall be made to any person or business entity to the extent of overpayment only if a written application for refund or credit is received by the county from the person or business entity within two years from the date the overpayment was made. No refund shall be made of any tax paid unless a complete return is filed as required by §110.24 of this chapter.

(Ord. O-24-81, passed 12-21-81; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

§ 110.25 INTEREST AND PENALTIES.

total tax due; however, the penalty shall not be less than \$25.

(B) (1) A business entity subject to tax on net profits may be subject to a penalty equal to 5% of the tax due for each calendar month or fraction thereof if the business entity:

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

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

(2) The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

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

(D) Every tax imposed by this chapter, and all

increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the county.

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

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

(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 chapter 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 county and required to be filed with the county by the provisions of this chapter, or by the rules of the county or by written request for information to the business entity by the county.

(Ord. O-24-81, passed 12-21-81; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-22-2003, passed 12-17-03; Am. Ord. O-24-04, passed 11-17-04)

authorized to examine any person under oath concerning any compensation or net profit which was shown or should have been shown in a return, and to this end he may compel the production of books, papers,

§ 110.26 LOWERING PERCENTAGE RATE OR TAX.

Nothing herein contained shall prevent the Fiscal Court, as determined necessary from time to time for the benefit of the county, from lowering the percentage rate or fixed amount license tax set out in § 110.22.

(Ord. O-24-81, passed 12-21-81; Am. Ord. O-24-04, passed 11-17-04)

§ 110.27 DUTIES AND INVESTIGATIVE POWERS OF LICENSE INSPECTOR AND ADMINISTRATIVE PROVISIONS.

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

(B) The License Inspector or any agent or employee designated by him is hereby authorized to examine the books, papers and records of any employer or supposed employer or of any business entity or supposed business entity in order to determine accuracy of any return made, or if no return was made to ascertain the amount of occupational tax due under the terms of this subchapter by such examination. Each such employer or supposed employer or business entity or supposed business entity shall give to the License Inspector or to his duly authorized agent or employee the means, facilities, and opportunities for the making of such examination and investigation. The License Inspector is hereby

records, and the attendance of all persons before him 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.

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

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

(1) In any case where the assessment period contained in § 110.24 of this chapter has been extended by an agreement between the business entity and the county, the limitation contained in this division (D) 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 division (D) or six months from the conclusion of the federal audit, whichever is later.

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

(F) The authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested exclusively in the county. (Ord. O-24-81, passed 12-21-81; Am. Ord. O-24-04, passed 11-17-04)

§ 110.28 ENFORCEMENT OF REGULATIONS.

The License Inspector is hereby charged with the enforcement of the provision of this subchapter and is hereby empowered to prescribe, adopt, promulgate, and enforce regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this subchapter, including but not limited to provisions for the re-examination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all business entities and employers.

(Ord. O-24-81, passed 12-21-81)

**§ 110.29 INFORMATION TO BE
CONFIDENTIAL.**

(A) Any information gained by the License Inspector or any other official or agent or employee of the county as a result of any returns, investigations, hearings, or verifications required or authorized by this subchapter shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. However, the License Inspector may disclose to the Commissioner of Revenue of the State of Kentucky or his duly authorized agent all such information and rights to inspect any of the books and records of such License Inspector if said Commissioner of Revenue of the State of Kentucky grants to the License Inspector the reciprocal right to obtain information from the files and records of the Department of Revenue of the State of Kentucky and maintains the privileged character of the information so furnished to him. Provided, further, that the county may publish statistics based on such information in such a manner as not to reveal data respecting the net profits or compensation of any person or business entity.

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

(C) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax

district, in an action for violation of a tax district tax law or in any action challenging a tax district tax law.

(D) Any person violating the provisions of § 110.29 of this chapter by intentionally inspecting

confidential taxpayer information without authorization shall be fined not more than \$500, or imprisoned for not longer than six months, or both.

(E) Any person violating the provisions of § 110.29 of this chapter by divulging confidential taxpayer information shall be fined not more than \$1,000, or imprisoned for not longer than one year, or both.

(Ord. O-24-81, passed 12-21-81; Am. Ord. O-24-04, passed 11-17-04) Penalty, see § 110.99

§ 110.30 ADMINISTRATION; COLLECTION OF LICENSE TAXES.

In order to reduce administrative costs and to minimize paperwork for employers, employees and business entities, this subchapter shall be administered in conjunction with Campbell County Fiscal Court Ordinance 1-78 as amended by Ordinance 1979-21 and Ordinance O-24-81 as deemed necessary by the Fiscal Court.

(Ord. O-24-81, passed 12-21-81; Am. Ord. O-24-04, passed 11-17-04)

§ 110.31 DISPOSITION OF REVENUE.

All money derived from license taxes under the provisions of this subchapter shall be paid to the License Inspector and placed to the credit of:

(A) The General Revenue Fund of the county and shall be used and expended to defray the current, general and incidental expenses of the county.

(B) To appropriate and pay over to agencies providing mental health and intellectual disability public service programs in the county, such funds as the Fiscal Court may deem necessary.

(C) Said funds shall be allocated to the agencies providing mental health/intellectual disability services on an annual basis, July 1 through June 30.

(D) Each agency desiring funds shall make an application to the Fiscal Court no later than March 1 preceding the fiscal year. The application shall be on forms provided by the Fiscal Court.

(E) Using the information supplied on the application, the Fiscal Court will allocate funds directly to the agencies and contract with those agencies for the services desired.

(F) All funds shall be used solely for the services to Campbell County residents. (Ord. O-24-81, passed 12-21-81; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-06-11, passed 5-4-11)

including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and

TRANSPORTATION TAX

§ 110.45 DEFINITIONS.

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

BUSINESS. Any enterprise, activity, trade, occupation, profession, or undertaking of any nature conducted for gain or profit. ***BUSINESS*** shall not include the usual activities of 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.

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.

COMPENSATION. Wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

(1) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement,

(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.

COUNTY. The County of Campbell County, Kentucky.

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

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

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, **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, **EMPLOYER** means such person.

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

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

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 and obtain an occupational license under this subchapter.

document permitted or required to be submitted or filed with the county.

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

(1) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;

(2) Include any amount claimed as a deduction that directly or indirectly is allocable to income that is either exempt from taxation or otherwise not taxed;

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

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

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

PERSON. Every natural person, whether a resident or non-resident of the county, co-partnership, fiduciary, association, or corporation. Whenever the term **PERSON** is used in any clause prescribing and imposing a penalty in the nature of a fine, the word, as applied to an association, 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.

RETURN or REPORT. Any properly completed and, if required, signed form, statement, certification, declaration, or any other

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

TAX DISTRICT. Any county with the authority to levy net profits or occupational license taxes. (Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

§ 110.46 PAYMENT OF TAX

(A) Except as provided in division (A)(2) of this section, every person or business entity engaged in any business for profit and any person or business entity that makes a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the county an annual occupational license tax for the privilege of engaging in such activities within the county. The occupational license tax shall be measured by 0.9% of:

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

(2) The net profits from business

conducted in the county by a resident or nonresident business entity, or \$11, whichever is greater.

(3) The maximum tax liability under this chapter shall be assessed as follows:

(a) For each employee \$348 (0.9% of \$38,667) or as adjusted in accordance with division (A)(6) of this section. This maximum shall be applied by each employer on the compensation by each employee, and deductions shall be made only upon the gross amount of compensation that does not exceed \$38,667 or as adjusted in accordance with division (A)(6) of this section.

(b) For each business entity, there shall be a \$523 maximum liability for the portion of the occupational license tax that is measured by taxable net profits not exceeding \$58,095 (0.9% of \$58,095) or as adjusted in accordance with division (A)(6) of this section.

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

(a) Any bank, trust company, combined bank and trust company, or trust, banking

and title insurance company organized and doing business in this state, or any savings and loan association whether state or federally chartered;

commissions, and other compensation earned within the county for work done or services performed or rendered in the

(b) Any compensation received by members of the state national guard for active duty training, unit training assemblies, and annual field training;

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

(d) Public service corporations that pay an ad valorem tax on property valued and assessed by the state 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 tax on their net profit derived from the non-public service activities apportioned to the county;

(e) Persons or business entities whose sole business activity is the manufacture of and/or sale of alcoholic beverages. Persons or business entities engaged in the business of manufacturing and/or selling alcoholic beverages are required to file a return but may exclude the portion of their net profit derived from such manufacturing and/or sale of alcoholic beverages;

(f) Insurance companies incorporating under the laws of and doing business in the Commonwealth except as provided for under KRS 91A.080.

(g) Persons or business entities that operate a two-dwelling unit rental property, where the owner occupies one dwelling unit and rents the other dwelling unit that is a part thereof.

(5) As authorized by KRS 68.197, in order to reduce administrative costs and to minimize paperwork for employers, employees, and businesses:

(a) Any person may elect to pay an annual fixed amount license tax as set forth in division (A)(2) of this section or as adjusted in accordance with division (A)(6) of this section, payable quarterly, in lieu of reporting and paying the percentage rate on salaries, wages,

county. The election shall be made on forms available from the License Inspector, and a copy thereof shall be given to the employer for withholding purposes; and

(b) Any individual, partnership, professional association, joint venture, or corporation may elect to pay an annual fixed amount license tax as set forth in division (A)(2) of this section or as adjusted in accordance with division (A)(6) of this section, payable in advance in lieu of reporting and paying the percentage rate as provided above on net profits of business, trades, professions, or occupations from activities conducted in the county. The election shall be made on forms available from the License Inspector. Beginning January 1, 2000, and annually thereafter, a person electing to pay the annual fixed amount license tax in advance shall do so prior to April 15 of each year.

(6) Beginning January 1, 2001, the license tax established by this section shall automatically be increased or decreased to reflect business and economic fluctuations. For this purpose, the Consumer Price Index (hereinafter called Index) for Cincinnati, Ohio, published by the Bureau of Labor Statistics of the United States Department of Labor, for the month of January 2000 shall be the base month for calculating adjustments to the fixed annual license tax. If the Index for January 2001 and for each January of each year thereafter shows an increase or decrease from the purchasing power of the fixed amount license tax in this section as compared in each case to the Index for the month of January 2000, then the fixed annual license tax for the succeeding year shall be adjusted according to the nearest whole dollar. The aforementioned adjustment may be affected by KRS 68.197(10) which became effective July 1, 2005.

(7) If, at the time required for the determination of the license tax adjustment, the Index is no longer published or issued, then the Fiscal Court shall use such other Index as is then generally recognized and accepted for similar determinations of purchasing power.

(Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. passed 9-12-86; Am. Ord. O-26-99, passed 12-1-99; Am. Ord. O-21-2004, passed 11-15-00; Am. Ord. O-26-2000, passed 12-6-00; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-15-05, passed 11-16-05; Am. Ord. O-01-08, passed 1-23-08)

compensation paid to the employee for payment to the county during the preceding calendar year.

§ 110.47 OCCUPATIONAL LICENSE REQUIRED; EMPLOYERS TO OBTAIN LICENSE, WITHHOLD TAXES, AND FILE RETURNS.

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

(B) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation an occupational license tax calculated under § 110.46 of this chapter imposed against the compensation by the county. Amounts withheld shall be paid to the county in accordance with this chapter.

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

(D) The employer shall furnish a statement, on or before January 31 of each year, showing the amount of compensation and occupational license tax deducted by the employer from the

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

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

(G) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the county a reconciliation of the occupational license tax withheld where compensation is paid or payable to employees. Either copies of federal form 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 county, shall be submitted.

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

(J) Notwithstanding divisions (G) and (H) of this section, every employee receiving compensation in the county subject to the tax imposed under § 110.46

of this chapter shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this chapter from the employee, such employee or employees shall be responsible for filing with the county each quarter in the same manner as if they were the employer or as otherwise required by the License Inspector. If an employer fails to or is not required to withhold, report, or pay the license fee it shall become the duty of the employee to file with the county. The only employer that is not required to withhold, report, and pay the occupational license tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee can be made quarterly, for the periods ending March 31, June 30, September 30, and December 31 of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28 for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually, during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

(K) Where there has been an overpayment of tax under § 110.47 of this chapter, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under this section by the employer. Unless a written application for refund or credit is received by the county from the employer within two years from the date the overpayment was made, no refund or credit shall be allowed. Where there has been an overpayment of the maximum tax due under this section, a refund or credit shall be made to the employee to the extent of overpayment only if a written application for refund is received by the county from the employer or the employee within two years from the date the overpayment was made. All written applications for refunds shall be submitted to the county License Inspector on a form

furnished or approved by the county. Refunds may be withheld from an employee until the employer has filed all required forms and provided all required information to the county License Inspector. Overpayments of less than \$5 shall not be refunded.

(L) An employee who has compensation attributable to activities performed outside the county, based on time spent outside the county, whose employer has withheld and remitted to this county the occupational license tax on the compensation attributable to activities performed outside the county, 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 county may confirm with the employer the percentage of time spent outside the county and the amount of compensation attributable to activities performed outside the county prior to approval of the refund. (Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

§ 110.48 BUSINESS NET PROFIT RETURNS REQUIRED.

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

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the county. Whenever, in the opinion of the county, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the county 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 county may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to an occupational license tax governed by the provisions of this chapter shall keep records, render under oath statements, make returns, and comply with rules as the county from time to time may prescribe. Whenever the county deems it necessary, the county 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 county deems sufficient to determine the tax liability the business entity.

(D) The county may require, for the purpose of ascertaining the correctness of any return or for

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

revenue in more than one tax district, by multiplying the net profit by the sales factor as set forth in division (K) of this section.

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

(F) Every business entity making payments of \$600 or more to persons or business entities for services performed within the county is responsible for maintaining the records of those payments and for completing IRS Form 1099 on or before February 28 of the year following the close of the calendar year in which such compensation was paid and to remit copies of the IRS Form 1099 or equivalent information to the county on or before February 28 of each year.

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

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

(I) Except as provided in division (L) of this section, net profit shall be apportioned as follows:

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

(2) For business entities with sales

(3) For the purposes of divisions (I) through (L) of this section, the business entity shall file an apportionment form provided by the county.

(J) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the county 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 county based on the time the individual's service is performed within the county.

(K) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the county 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 county 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 county 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 county 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 county based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the county 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.

(L) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the county, the business entity may petition the county or the county 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 county; or

application for refund or credit is received by the county from the person or business entity within two years from the

(4) The employment of any other method to effectuate an equitable allocation and apportionment of net profit.

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

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

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

(P) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this chapter 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.

(Q) Where there has been an overpayment of tax under § 110.48 of this chapter, a refund or credit shall be made to any person or business entity to the extent of overpayment only if a written

date the overpayment was made. No refund shall be made of any tax paid unless a complete return is filed as required by § 110.48 of this chapter. (Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-24-04, passed 11-17-04; Am. Ord. O-15-05, passed 11-16-05)

§ 110.49 INTEREST AND PENALTIES.

(A) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 110.47 of this chapter may be subject to a penalty in the amount of 5% of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

(B) (1) A business entity subject to tax on net profits may be subject to a penalty equal to 5% of the tax due for each calendar month or fraction thereof if the business entity:

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

(b) Fails to pay the tax computed on

the return or report on or before the due date prescribed for payment.

(2) The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.

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

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

(E) The county may enforce the collection of the occupational tax due under § 110.46 of this chapter and any taxes, penalties, and interest as provided in divisions (A) through (D) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the county shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this chapter.

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

imposed by this subchapter and to keep records showing the amounts received by him from each employer or business entity.

(B) The License Inspector or any agent or employee designated by him is hereby authorized to

(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 chapter 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 county and required to be filed with the county by the provisions of this chapter, or by the rules of the county or by written request for information to the business entity by the county.

(Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-5-2002, passed 3-20-02; Am. Ord. O-22-2003, passed 12-17-03; Am. Ord. O-24-04, passed 11-17-04)

§ 110.50 LOWERING OR RAISING PERCENTAGE RATE OR TAX.

Nothing herein contained shall prevent the Fiscal Court, as determined necessary from time to time, for the benefit of the county, from lowering or raising the percentage rate or fixed amount license tax set out in § 110.46, provided the said license taxes shall not exceed the rate authorized by KRS 68.197.

(Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-24-04, passed 11-17-04)

§ 110.51 DUTIES AND INVESTIGATIVE POWERS OF LICENSE INSPECTOR AND ADMINISTRATIVE PROVISIONS.

(A) It shall be the duty of the License Inspector to collect and receive all license taxes

examine the books, papers and records of any employer or supposed employer or any business entity or supposed business entity in order to determine the accuracy of any return made or, if no return was made, to ascertain the amount of occupational tax due under the terms of this subchapter by such examination. Each such employer or supposed employer or business entity or supposed business entity shall give to the License Inspector or to his duly authorized agent or employee the means, facilities, and opportunities for the making of such examination and investigation. The License Inspector is hereby authorized to examine any person under oath concerning any compensation or net profit which was shown or should have been shown in a return, and to this end he may compel the production of books, papers, records, and the attendance of all persons before him whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts or compensation, to the extent that any officer empowered to administer oaths in this Commonwealth is permitted to do so.

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

(D) Any tax collected pursuant to the provisions of this chapter may be refunded or

credited within two years of the date prescribed by law for the filing of a return or the date the money was paid to the county, whichever is the later, except that:

(1) In any case where the assessment period contained in § 110.48 of this chapter has been extended by an agreement between the business entity and the county, the limitation contained in this division (D) 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 division (D) or six months from the conclusion of the federal audit, whichever is later.

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

(F) The authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested exclusively in the county. (Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-24-04, passed 11-17-04)

§ 110.52 ENFORCEMENT OF REGULATIONS.

The License Inspector is hereby charged with the enforcement of the provisions of this subchapter and is hereby empowered to prescribe, adopt, promulgate, and enforce regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this subchapter, including but not limited to provision 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 regulations so promulgated shall be binding upon all business entities and employers. (Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-24-04, passed 11-17-04)

inspect or divulge any information acquired by him or her of the affairs of any person or information regarding the tax schedules, returns, or reports

§ 110.53 INFORMATION TO BE CONFIDENTIAL.

(A) Any information gained by the License Inspector or any another official or agent or employee of the county as a result of any returns, investigations, hearings or verifications required or authorized by this subchapter shall be confidential except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. However, the License Inspector may disclose to the Commissioner of Revenue of the State of Kentucky or his duly authorized agent, all such information and rights to inspect any of the books and records of the License Inspector if said Commissioner of Revenue of the State of Kentucky grants to the License Inspector the reciprocal right to obtain information from the files and records of the Department of Revenue of the State of Kentucky and maintains the privileged character of the information so furnished to him. Provided, further, the county may publish statistics based on such information in such a manner as not to reveal data respecting the net profits or compensation of any person or business entity.

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

(C) No present or former employee of any tax district shall intentionally and without authorization

required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax law or in any action challenging a tax district tax law.

(D) Any person violating the provisions of § 110.53 of this chapter by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than \$500, or imprisoned for not longer than six months, or both.

(E) Any person violating the provisions of § 110.53 of this chapter by divulging confidential taxpayer information shall be fined not more than

\$1,000, or imprisoned for not longer than one year, or both.

(Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-24-04, passed 11-17-04)

§ 110.54 DISPOSITION OF REVENUE.

All money delivered from license taxes under the provisions of this subchapter shall be paid to the License Inspector and placed to the credit of:

(A) The General Revenue Fund of the county and shall be used and expended in defraying the current general and incidental expenses of the county.

(B) To appropriate and pay over to the Transit Authority of Northern Kentucky capital and operating funds as provided in KRS Chapter 96A.

(C) For traffic improvement and mass transportation related projects as authorized by the Fiscal Court.

(Ord. 1-78, passed 6-18-79; Am. Res. R-34-78, passed 6-18-79; Am. Ord. O-24-04, passed 11-17-04)

CHAPTER 111: ALCOHOLIC BEVERAGES

Section

passed 11-20-13) Penalty, see § 111.99

Operation and Sale of Alcoholic Beverages

- 111.01 Hours of operation
- 111.02 Sale or transfer of alcoholic beverages during closing hours
- 111.03 Prohibiting certain persons on premises during closing hours
- 111.04 Open containers
- 111.05 Sales

Nude or Nearly Nude Activities

- 111.20 Definition
- 111.21 Performing nude or nearly nude activities
- 111.22 Permitting nude or nearly nude activities
- 111.23 Revocation or suspension of liquor license for violations
- 111.24 Revocation and forfeiture of permit for violations

- 111.99 Penalty

Cross Reference:

Responsibility for possession or consumption of alcoholic beverages by minors, see § 130.04

OPERATION AND SALE OF ALCOHOLIC BEVERAGES

§ 111.01 HOURS OF OPERATION.

No premise for which there has been granted a license for the sale by the drink or package, or consumption on or off the premises, of beer, malt beverages, distilled spirits, or wine, shall be permitted to remain open between the hours of 2:30 a.m. and 6:00 a.m.; however, the legislative body of any city, or the County Fiscal Court in the unincorporated areas of the county may, by ordinance, permit such establishments to remain open for such purpose until the hour of 3:00 a.m. (Ord. 0-11-85, passed 3-19-86; Am. Ord. O-12-13,

§ 111.02 SALE OR TRANSFER OF ALCOHOLIC BEVERAGES DURING CLOSING HOURS.

No licensee, his employee, or agent shall permit the sale, dispensing, giving away or consumption of beer, malt beverages, distilled spirits, or wine between the hours of 2:00 a.m. and 6:00 a.m.

(Ord. 0-11-85, passed 3-19-86; Am. Ord. O-12-13, passed 11-20-13) Penalty, see § 111.99

§ 111.03 PROHIBITING CERTAIN PERSONS ON PREMISES DURING CLOSING HOURS.

(A) During the hours of 2:30 a.m. and 6:00 a.m., no person shall be present upon the premises of an establishment licensed for the sale of alcoholic beverages by the drink except the person who has legal possession of the premises and his bona fide employees, who are actually on the premises for the purposes of cleaning, refurbishing or making repairs to the premises.

(B) During the hours of 2:30 a.m. and 6:00 a.m., no licensee shall permit or allow any person

to be present upon the premises of such establishment except those persons mentioned in division (A) above.

(Ord. 0-11-85, passed 3-19-86; Am. Ord. O-12-13, passed 11-20-13) Penalty, see § 111.99

§ 111.04 OPEN CONTAINERS.

The presence of any open container of beer, malt beverage, distilled spirits, or wine, between the hours of 2:30 a.m. and 6:00 a.m. shall be prima facia evidence of sale, dispensing, giving away or consumption of said beverage. This section shall not apply to open containers of bar stock of distilled spirits or wine found behind the bar.

(Ord. 0-11-85, passed 3-19-86; Am. Ord. O-12-13, passed 11-20-13) Penalty, see § 111.99

§ 111.05 SALES.

(A) A person or entity holding a license under the provisions of this chapter and applicable state law

may sell alcoholic beverages or do any act as authorized by the license.

(B) The sale of alcoholic beverages shall occur only during the hours hereinafter set out for each license. The hours when sales are permitted are as follows:

(1) A licensee holding a NQ Retail Beverage Package License or a Quota Retail Package License during the hours of 6:00 a.m. to 2:00 a.m. the next morning, except on Sundays when the permitted times are from 11:00 a.m. to midnight on Sunday.

(2) A licensee holding a NQ Retail Malt Beverage Package License during the hours of 6:00 a.m. to 2:00 a.m. the next morning, except Sundays when the permitted times are from 11:00 a.m. to midnight, unless New Year's Eve falls on a Sunday, when the permitted times are from 11:00 a.m. until 2:00 a.m. the next morning.

(3) A licensee holding a Winery license or a Small Farm Winery license during the hours of

6:00 a.m. until 2:00 a.m. the next morning, except Sundays when the permitted times are from 11:00 a.m. to midnight, unless New Year's Eve falls on a Sunday, when the permitted times are from 11:00 a.m. until 2:00 a.m. the next morning.

(4) During all times when a licensed premise is open and the licensee is not permitted to sell alcoholic beverages, a licensee shall provide a separate area with the licensed premises capable of being locked, closed off or otherwise properly separated, within which is kept all stocks of alcoholic beverages and all fixtures and apparatus connected with the business as a licensee, and said area shall be kept locked or separated.

(Ord. O-11-85, passed 3-19-86; Am. Ord. O-05-05, passed 5-18-05; Am. Ord. O-10-06, passed 8-9-06; Am. Ord. O-12-13, passed 11-20-13) Penalty, see § 111.99

NUDE OR NEARLY NUDE ACTIVITIES

§ 111.20 DEFINITIONS.

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

BUSINESS ESTABLISHMENT. A business within the county where liquor, beer and/or wine is sold for consumption on the premises pursuant to a retail drink liquor license and/or a retail cereal malt beverage license.

LICENSE. A NQ Retail Malt Beverage Package license; a Quota Retail Package License; a NQ-4 Retail Malt Beverage Drink license; a Quota Retail Drink license; a Winery license; and Small Farm Winery license.

PLACE OF ENTERTAINMENT LICENSE. The license granted by the county pursuant to KRS Chapter 231.

PREMISES. The land and building in and upon which any business establishment is carried on.

RETAIL LICENSEE. Any license holder, including its officers and agent who sells at retail any alcoholic beverage for the sale of which a retail drink liquor license and/or a retail cereal malt beverage liquor license is required. (Ord. 0-9-85, passed 10-15-85; Am. Ord. O-12-13, passed 11-20-13)

§ 111.21 PERFORMING NUDE OR NEARLY NUDE ACTIVITIES.

It shall be unlawful for a person to perform nude, nearly nude, or simulated nude activity on a business establishment's premises. A person is guilty of performing a nude, nearly nude, or simulated nude activity on a business establishment's premises when that person appears in such a manner or attire so as to expose to view any portion of the pubic area, anus, vulva, or genitals, or any simulation thereof, or when any female appears on a business establishment's premises in such a manner or attire as to expose to view that portion of her breast referred to as the areola or nipple, or simulation thereof. (Ord. 0-9-85, passed 10-15-85; Am. Ord. O-12-13, passed 11-20-13) Penalty, see § 111.99

§ 111.22 PERMITTING NUDE OR NEARLY NUDE ACTIVITIES.

A retail licensee, or any other person, corporation, or other entity, is guilty of permitting a nude, nearly nude, or simulated nude activity, when being the retail licensee, or when having control of the business establishment's premises, he allows or permits any person to appear on the premises in such manner or attire so as to expose to view any portion of the pubic area, anus, vulva, or genitals, or any simulation thereof, or any female to appear on the premises in such manner or attire so as to expose to view any portion of her breast referred to as the areola or nipple, or simulation thereof. A retail licensee or other person, corporation, or other entity, having control of the business establishment's premises, shall also be guilty of permitting a nude, nearly nude, or simulated nude activity, when having knowledge of such activity, he fails to make reasonable and timely effort to halt such activity.
(Ord. 0-9-85, passed 10-15-85; Am. Ord. O-12-13, passed 11-20-13) Penalty, see § 111.99

forfeiture of the business establishment's place of entertainment permit by the county judge/executive, pursuant to KRS 231.125.
(Ord. 0-9-85, passed 10-15-85; Am. Ord. O-12-13, passed 11-20-13)

§ 111.23 REVOCATION OR SUSPENSION OF LIQUOR LICENSE FOR VIOLATIONS.

(A) In the event of a conviction for violation of §§ 111.21 and/or 111.22, the State Alcoholic Beverage Control Administrator or a person designated by him, or the County Alcoholic Beverage Control Administrator, may conduct a hearing pursuant to KRS 243.520 (in conjunction with KRS 241.080 through KRS 241.150) to determine whether the liquor license and/or cereal malt beverage license for the premises upon which the violation occurred, should be revoked or suspended.

(B) In the event of three or more convictions or violations of §§ 111.21 and/or 111.22, after a hearing, the liquor license and/or cereal malt beverage license shall be revoked or suspended.
(Ord. 0-9-85, passed 10-15-85; Am. Ord. O-12-13, passed 11-20-13)

§ 111.24 REVOCATION AND FORFEITURE OF PERMIT FOR VIOLATIONS.

Conviction for violation of §§ 111.22 and/or 111.23 shall be deemed ground for revocation and

§ 111.99 PENALTY.

(A) Any licensee, his employee, or agent, or any other person who violates any of the provisions of this chapter shall be guilty of a Class B Misdemeanor as defined in the Kentucky Revised Statutes, and sentenced to a fine of not more than \$250 or incarceration in the county jail for not more than 90 days or both. (Ord. 0-11-85, passed 3-19-86)

(B) Performing a nude, nearly nude, or simulated nude activity as set forth in § 111.21 or permitting such activity as set forth in § 111.22, for the first offense is a violation; and punishment shall be fixed as set forth in the Kentucky Revised Statutes; for a second offense, a class B misdemeanor; and for a third and subsequent offenses, a class A misdemeanor, and punishment shall be fixed as set forth in the Kentucky Revised Statutes for those offenses. (Ord. 0-9-85, passed 10-15-85; Am. Ord. O-12-13, passed 11-20-13)

CHAPTER 112: SOLICITORS

Section

Door-to-Door Solicitation

- 112.01 Registration required
- 112.02 Issuance of permit; exemption

- 112.99 Penalty

DOOR-TO-DOOR SOLICITATION

§ 112.01 REGISTRATION REQUIRED.

Any and all door-to-door solicitors within the unincorporated area of the county shall, before beginning such solicitation, be required to register with the County Police Department, giving their names, address, and the firm by which they are employed, and the time during which they intend to pursue said occupation in county.

(Res. R-46-75, passed 10-20-75) Penalty, see § 112.99

§ 112.02 ISSUANCE OF PERMIT; EXEMPTION.

A permit shall then be issued by the County Police Department, and said permit must be carried on the solicitor's person while soliciting. All students from local schools would be exempt from the provisions of the subchapter.

(Res. R-46-75, passed 10-20-75) Penalty, see § 112.99

§ 112.99 PENALTY.

Any person violating §§ 112.01 or 112.02 by failing to so register, or by not having said permit on his person while soliciting, shall be subject to a fine of not less than \$10 nor more than \$500. Each day of said solicitation shall constitute a separate offense.

(Res. R-46-75, passed 10-20-75)

CHAPTER 113: CABLE TELEVISION

Section 113.56 Performance evaluation sessions

GRANT OF FRANCHISE AND GENERAL PROVISIONS

- 113.01 Title of chapter
- 113.02 Definitions
- 113.03 Rights and privileges of company
- 113.04 Agreement and incorporation of application by reference
- 113.05 Franchise territory
- 113.06 Duration and acceptance of franchise
- 113.07 Police powers
- 113.08 CATV franchise required
- 113.09 Use of company facilities
- 113.10 Costs
- 113.11 Notices
- 113.12 Letter of credit
- 113.13 Performance bond
- 113.14 Liability and insurance
- 113.15 Indemnification
- 113.16 Rights of individuals
- 113.17 Public notice
- 113.18 Severability

CATV SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

- 113.30 Company's application incorporated
- 113.31 Service availability and record request
- 113.32 CATV system construction
- 113.33 Construction and technical standards
- 113.34 Use of streets
- 113.35 Operational standards
- 113.36 Continuity of service mandatory
- 113.37 Complaint procedure
- 113.38 Company rules and regulations
- 113.39 Franchise fee
- 113.40 Transfer of ownership or control
- 113.41 Availability of books and records
- 113.42 Other petitions and applications
- 113.43 Fiscal reports
- 113.44 Removal of CATV system
- 113.45 Required services and facilities

ADMINISTRATION AND REGULATION

- 113.55 Rules and regulations

113.57 Initial rates; request timing;

113.67 Theft of services and tampering
d

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e
r

**GRANT OF FRANCHISE AND GENERAL
i PROVISIONS**

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§ 113.01 TITLE OF CHAPTER.

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This chapter shall be known and may be cited as the "Campbell County Cable Communication Franchise," and it shall become a part of the ordinances of the county.

(Ord. O-9-81, passed 7-19-81; Am. Ord. O-14-81, passed 8-8-81)

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§ 113.02 DEFINITIONS.

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For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 113.58 Rate change procedures
- 113.59 Campbell County CATV Board
- 113.60 Penalties
- 113.61 Forfeiture and termination
- 113.62 Foreclosure
- 113.63 Receivership
- 113.64 Purchase of CATV System by county
- 113.65 Compliance with state and federal

BASIC SERVICE. All subscriber services provided by the company in one or more service tiers, including the delivery of broadcast signals, access channels and origination channels, covered by the regular monthly charge paid by all subscribers to a

113.66 Landlord/tenant

particular service tier, excluding optional services for which a separate charge is made.

CABLE COMMUNICATION SYSTEM or **CATV SYSTEM**. Shall mean a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals, located in the county. Said definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, which does not use county's and cities' rights-of-way.

CATV BOARD or **BOARD**. The county cable television regulatory authority as described in § 113.59.

CLASS IV CHANNEL. A signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

COMPANY. Storer Communications of Northern Kentucky, Inc., the grantee of rights under this chapter awarding a franchise, or the successor, transferee or assignee.

CONVERTER. An electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated converter dial locations.

COUNTY. Campbell County in the Commonwealth of Kentucky. The legislative body of the County is the Campbell County Fiscal Court.

FCC. The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

GROSS REVENUES. All revenue derived directly or indirectly by the company, its affiliates, subsidiaries, parent, and any person in which the company has a financial interest, from providing cable television services within the county, including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation

and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the company herein imposed directly upon any

subscriber or user by the Commonwealth, local or other governmental unit and collected by the company on behalf of said governmental unit.

INITIAL SERVICE AREA. All areas in Campbell County (excluding the City of Newport) having at least 50 dwelling units per street mile, or as offered by the company in its application to provide service to the county, whichever formula offers the more inclusive service area.

INSTALLATION. The connection of the system from feeder cable to subscribers' terminals.

MONITORING. Observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever. Provided, monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return path transmissions, or billing for pay services.

STREET. The surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the county,

Commonwealth, and cities for the purposes of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the county, Commonwealth, and cities.

SUBSCRIBER. A recipient of cable television service.

USER. A party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

(Ord. 0-9-81, passed 7-19-81)

§ 113.03 RIGHTS AND PRIVILEGES OF COMPANY.

The franchise granted by the county pursuant to this chapter shall grant to the company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets; any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a CATV system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical signals and the right to transmit

the same to the inhabitants of the county on the terms and conditions hereinafter set forth.
(Ord. 0-9-81, passed 7-19-81)

company before a notary public or other officer authorized by law to administer oaths.
(Ord. 0-9-81, passed 7-19-81)

§ 113.04 AGREEMENT AND INCORPORATION OF APPLICATION BY REFERENCE.

(A) Upon adoption of this chapter and execution hereof by the company, the company agrees to be bound by all the terms and conditions contained herein.

(B) The company also agrees to provide all services specifically set forth in its application to provide cable television service within the confines of Campbell County and by its acceptance of the franchise, the company specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise and this chapter. In the event of a conflict between such proposals and the provisions of this chapter, that provision which provides the greatest benefit to the county, in the opinion of the CATV Board, shall prevail.
(Ord. 0-9-81, passed 7-19-81)

§ 113.05 FRANCHISE TERRITORY.

The franchise is for the present territorial limits of Campbell County, Kentucky including municipalities located within Campbell County, except the City of Newport, and for any area henceforth added thereto during the term of the franchise.
(Ord. 0-9-81, passed 7-19-81)

§ 113.06 DURATION AND ACCEPTANCE OF FRANCHISE.

The franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for a term of 15 years, provided that within 15 days after the date of final passage of the franchise the company shall file with the CATV Board chairperson its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the

§ 113.07 POLICE POWERS.

(A) In accepting this franchise, the company acknowledges that its rights hereunder are subject to the police power of the county to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the county pursuant to such power.

(B) Any conflict between the provisions of this franchise and any other present or future lawful exercise of the county's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to company or CATV systems which contains provisions inconsistent with this chapter shall prevail only if upon such exercise, the county finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

(Ord. 0-9-81, passed 7-19-81)

§ 113.08 CATV FRANCHISE REQUIRED.

No CATV system shall be allowed to occupy or use the streets of the Commonwealth, county, and cities or be allowed to operate without a CATV franchise.

(Ord. 0-9-81, passed 7-19-81)

§ 113.09 USE OF COMPANY FACILITIES.

The county or cities of the county shall have the right, during the life of this chapter, to install and maintain free-of-charge upon the poles solely owned by the company any wire and pole fixtures that do not unreasonably interfere with the CATV operations of the company.

(Ord. 0-9-81, passed 7-19-81)

§ 113.10 COSTS.

Costs to be borne by the company shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to this chapter, and any costs not covered by the application fees, incurred by the county or Board in its study, preparation of proposal documents, evaluation of all applications, and examinations of applicants' qualifications.

(Ord. 0-9-81, passed 7-19-81)

§ 113.11 NOTICES.

All notices from the company to the county pursuant to this chapter shall be to the CATV Board. The company shall maintain with the Board, throughout the term of this chapter, an address for service of notices by mail. The company shall also maintain with the Board, a local office in the franchise area, and a telephone number for the conduct of matters related to this chapter during normal business hours.

(Ord. 0-9-81, passed 7-19-81)

(D) The rights reserved to the Board with

§ 113.12 LETTER OF CREDIT.

(A) Within ten days after the award of the franchise, the company shall deposit with the Board a letter of credit from a financial institution in the amount of \$30,000. The form and content of such letter of credit shall be approved by the County Attorney. The letter of credit shall be used to insure the faithful performance by the company of all provisions of the franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the county having jurisdiction over its acts or defaults under this chapter, and the payment by the company of any claims, liens and taxes due the county or other municipalities which arise by reason of the construction, operation or maintenance of the system.

(B) The letter of credit shall be maintained at \$30,000 during the entire term of the franchise, even if amounts have to be withdrawn pursuant to divisions (A) or (C) of this section.

(C) If the company fails to pay to the Board any compensation within the time fixed herein; or fails, after ten days' notice, to pay to the Board any taxes due and unpaid; or fails to repay the Board within ten days any damages, costs or expenses which the Board is compelled to pay by reason of any act or default of the company in connection with the franchise; or fails, after three days' notice of such failure by the company, to comply with any provision of this franchise which the Board reasonably determines can be remedied by demand on the letter of credit, the Board may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit. Upon such request for payment, the Board shall notify the company of the amount and date thereof.

respect to the letter of credit are in addition to all other rights of the Board, whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Board may have.

(E) The letter of credit shall contain the following endorsement:

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(Ord 0-9-81, passed 7-19-81)

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§ 113.13 PERFORMANCE BOND.

(A) Within 30 days after the award of the franchise, the company shall file with the Board a performance bond in the amount of \$500,000 in favor of the county. This bond shall be maintained throughout the construction of the initial service area, and until such time as determined by the Board.

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(B) In the event the company fails to comply with any law, ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the company's proposal which is incorporated herein by reference, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the county as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the company, plus a reasonable allowance for attorney's fees, including the Board's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in § 113.65.

(C) The CATV Board may, upon completion of construction of the service area as approved by the Board, waive or reduce the requirement of the company to maintain said bond. However, the Board may require a performance bond to be posted by the company for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the Board.

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(D) The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the Board, by registered mail, of a written notice of such intent to cancel or not to renew."

(Ord. 0-9-81, passed 7-19-81)

(D) All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

§ 113.14 LIABILITY AND INSURANCE.

(A) The company shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the county, cities, Board, Campbell County Council of Governments, and the company in the minimum amount of:

(1) \$300,000 for property damage to any one person;

(2) \$500,000 for property damage in any one accident;

(3) \$500,000 for personal bodily injury to any one person; and

(4) \$1,000,000 for personal bodily injury in any one accident.

Said figures may be increased by the Board to compensate for inflation.

(B) The insurance policy obtained by the company in compliance with this section must be approved by the County Attorney and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the CATV Board during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The company shall immediately advise the Board of any litigation that may develop that would affect this insurance.

(C) Neither the provisions of this section nor any damages recovered by the county thereunder, shall be construed to or limit the liability of the company under any franchise issued hereunder or for damages.

" It is hereby understood and agreed that this insurance

policy may not be cancelled by the surety nor the intention

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~~(A)~~ The company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the county, Board, and cities, its officers, boards, commissions, and employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the Board in connection therewith):

s (1) To persons or property, in any way arising out of or through the acts or omissions of the company, its servants, agents or employees, or to which the company's negligence shall in any way contribute;

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n (2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to county programming); and

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(3) Arising out of the company's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to the company in its business hereunder.

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~~(B)~~ The foregoing indemnity is conditioned upon the following: The Board shall give the company prompt notice of the making of any claim or commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the county from cooperating with the company and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the county of any sum by reason of the letter of credit required in § 113.12 hereof shall be any limitation upon the liability of the company to the county under the terms of this section, except that any sum so received by the county shall be deducted from any recovery which the county might have against the company under the

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(Ord. 0-9-81, passed 7-19-81)

§ 113.15 INDEMNIFICATION.

terms of this section.

(Ord. 0-9-81, passed 7-19-81)

(b) Any list which identifies the viewing habits of individual subscribers.

§ 113.16 RIGHTS OF INDIVIDUALS.

(A) The company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, or sex. The company shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

(B) The company shall strictly adhere to the equal employment opportunity requirements of the FCC, state statutes and local regulations, and as amended from time to time.

(C) No signals of a Class IV cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. (This statement must be in authorization). The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of Class IV cable communications activity planned; provided however, that the company shall be entitled to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for pay services.

(D) (1) The company, or any of its agents or employees, shall not sell, or otherwise make available to any party:

(a) Lists of the names and addresses of subscribers, or

(2) This section does not prohibit the company from providing composite ratings of subscriber viewing to any party.
(Ord. 0-9-81, passed 7-19-81)

§ 113.17 PUBLIC NOTICE.

Minimum public notice of any public meeting relating to the franchise shall be by publication at least once in a local newspaper of general circulation, in compliance with KRS Chapter 424, at least ten days prior to this meeting, posting at the Newport Courthouse, and by announcement on at least two of the highest-rated origination channels of the company's CATV system between the hours of 7:00 p.m. and 9:00 p.m., for five consecutive days prior to the meeting.
(Ord. 0-9-81, passed 7-19-81)

§ 113.18 SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.
(Ord. 0-9-81, passed 7-19-81)

***CATV SYSTEM EXTENSION, OPERATION,
STANDARDS AND PROCEDURES***

§ 113.30 COMPANY'S APPLICATION INCORPORATED.

The company shall, in addition to the minimum requirements of this chapter, provide all other services specifically set forth in its application and any supplements to provide cable television service to Campbell County, and by its acceptance of this chapter, the company specifically grants and agrees that its application is thereby incorporated by reference and made a part of this chapter. In the event of a conflict between such proposals and the provisions of this chapter, that provision which provides the greatest benefit to the county in the opinion of the Board shall prevail.
(Ord. 0-9-81, passed 7-19-81)

§ 113.31 SERVICE AVAILABILITY AND RECORD REQUEST.

The company shall provide cable communications service throughout the entire franchise area pursuant to the provisions of this chapter and shall keep a record for at least three years of all requests for service received by the company. This record shall be available for public inspection at the local office of the company during regular office hours.

(Ord. 0-9-81, passed 7-19-81)

§ 113.32 CATV SYSTEM CONSTRUCTION.

(A) Construction timetable.

(1) Within three years from the date of the award of the franchise, the company must make cable television service available to every dwelling unit within the initial service area.

(a) The company must make cable television service available to at least 20% of the dwelling units within the initial service area within one year from the date of the award of the franchise.

(b) The company must make cable television service available to at least 50% of the dwelling units within the initial service area within two years from the date of the award of the franchise.

(c) The company must make cable television service available to at least 100% of the dwelling units within the initial service area within three years from the date of the award of the franchise.

(2) The company, in its application, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the above minimum requirements, in which case the company's application will be incorporated by reference pursuant to § 113.04, and will be binding upon the company.

(3) Any delay beyond the terms of this timetable, unless specifically approved by the Board, will be considered a violation of this chapter for which the provisions of either § 113.60 or §

113.61 shall apply, as determined by the Board.

(B) Line extensions. In areas of the franchise territory not included in the initial service area, the company shall be required to extend its system

pursuant to the following requirements:

(1) The company must extend and make cable television service available to every dwelling unit within one year of any unserved area reaching the minimum density of at least 50 dwelling units per street mile, as measured from the existing system.

(2) The company must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least 50 dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.

(3) The company must extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard 150 foot aerial drop line.

(4) With respect to requests for connection requiring an aerial drop line in excess of 150 feet, the company must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the company for the distance exceeding 150 feet.

(5) Whenever the company shall have received written requests for services from at least 15 assured subscribers within 1,300 cable feet of its aerial trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 1,300 cable feet shall be measured in extension length of company's cable required for service located within the public way or easement and shall not include the length of necessary drop to the subscriber's house or premises.

(C) Line extension policy. The company, in its application, may propose a line extension policy which will result in serving more residents of the county than as required above, in which case the company's application will be incorporated by reference pursuant to § 113.04 and will be binding on the company.

(D) Violations. Any violation of this section shall be considered a breach of the terms of this chapter for which the provisions of either § 113.60 or § 113.61 shall apply, as determined by the Board. (Ord. 0-9-81, passed 7-19-81)

§ 113.33 CONSTRUCTION AND TECHNICAL STANDARDS.

of Transportation.

(A) Compliance with construction and technical standards. The company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed standards submitted by the company as part of its application, which standards are incorporated by reference herein. In addition, the company shall provide the Board, upon request, with a written report of the results of the company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(B) Additional Specifications.

(1) Construction, installation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(2) The company shall at all times comply with:

(a) National Electrical Safety Code (National Bureau of Standards);

(b) National Electrical Code (National Bureau of Fire Underwriters);

(c) Bell System Code of Pole Line Construction;

(d) Applicable FCC or other federal, state and local regulations; and

(e) Applicable local permits.

(3) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.

(4) Any antenna structure used in the cable communication system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department

(5) All working facilities, conditions, and procedures used during construction, installation and maintenance of the CATV system shall comply with the standards of the Occupational Safety and Health Administration.

Board, replace and restore all paving, sidewalk, driveway,

(6) Rf leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the naval flight patterns. FCC rules and regulations shall govern.

(7) The company shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of two hours.

(8) In all areas of the county where the cables, wires, and other like facilities of public utilities are placed underground, the company shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits.

(Ord. 0-9-81, passed 7-19-81)

§ 113.34 USE OF STREETS.

(A) Interference with persons and improvements. The company's system, poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the county, Commonwealth, and cities may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(B) Minimum interference with public ways. All transmission and distribution structures, lines and equipment erected by the company within the county shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(C) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense and in a manner approved by the

landscaping, or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work set by the Board.

(D) Erection, removal, and common uses of poles.

(1) No poles or other wire-holding structures shall be erected by the company without prior approval of the CATV Board with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the company shall be a vested interest and such poles or structures shall be removed or modified by the company at its own expense whenever the Board determines that the public convenience would be enhanced thereby.

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

(3) Where the county, city or a public utility serving the county desires to make use of the poles or other wire-holding structures of the company, but agreement thereof with the company cannot be reached, the Board may require the company to permit such use for such consideration and upon such terms as the Board shall determine to be just and reasonable, if the Board determines that the use would enhance the public convenience and would not unduly interfere with the company's operations.

(E) Relocation of the facilities. In the event that at any time during the period of this franchise, the Commonwealth, county or city shall lawfully elect to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the proper municipality, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(F) Cooperation with building movers. The company shall, on the request of any person holding a building moving permit issued by the county or

city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the company

shall have the authority to require such payment in advance. The company shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

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(G) Tree trimming. The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the Board. Regardless of who performs the work requested by the company, the company shall be responsible, shall defend and hold the county harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.
(Ord. 0-9-81, passed 7-19-81)

§ 113.35 OPERATIONAL STANDARDS.

(A) The company shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.

(B) Upon the reasonable request for service by any person located within the franchise territory, the company shall, within 30 days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed.

(C) The company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(D) The company shall not allow its cable or other operations to interfere with television reception of persons not served by company, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the county.

(E) The company shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter. Should the Board find, by resolution, that the company has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the company shall make such improvements. Failure to make such improvements

months of such resolution will constitute a breach of a condition for which the remedy of § 113.60(D) is applicable.

(Ord. 0-9-81, passed 7-19-81)

§ 113.36 CONTINUITY OF SERVICE MANDATORY.

(A) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the company are honored. In the event that the company elects to overbuild, rebuild, modify, or sell the system, or the Board gives notice of intent to terminate or fails to renew the franchise, the company shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. In the event of a change of franchisee, or in the event a new operator acquires the system, the company shall cooperate with the county, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, the company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(B) In the event the company fails to operate the system for seven consecutive days without prior approval of the Board or without just cause, the Board may, at its option, operate the system or designate an operator until such time as the company restores service under conditions acceptable to the Board or a permanent operator is selected. If the Board is required to fulfill this obligation for the company, the company shall reimburse the Board for all reasonable costs or damages in excess of revenues from the system received by the Board that are the result of the company's failure to perform.

(Ord. 0-9-81, passed 7-19-81)

§ 113.37 COMPLAINT PROCEDURE.

(A) The CATV Board is designated as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(B) During the term of the franchise, and any renewal thereof, the company shall maintain a local

business office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipment malfunctions and similar

matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. The company shall provide the means to accept complaint calls 24 hours a day, seven days a week. Any service complaints shall be investigated within 48 hours of receipt. The company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by the Board.

(C) As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the county office responsible for administration of the franchise with the address and telephone number of the office concerning the county office responsible for administration of the franchise with the address and telephone number of the office.

(D) When there have been similar complaints made, or where there exists other evidence which, in the judgment of the CATV Board, casts doubt on the reliability or quality of cable service, the Board shall have the right and authority to require the company to test, analyze, and report on the performance of the system. The company shall fully cooperate with the Board in performing such testing and shall prepare results and a report, if requested, within 30 days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests.
- (2) What system component was tested.
- (3) The equipment used and procedures employed in testing.
- (4) The method, if any, in which such complaint or problem was resolved.
- (5) Any other information pertinent to said tests and analysis which may be required.

(E) The Board may require that tests be

supervised, at the company's expense, by a professional engineer not on the permanent staff of the company. The engineer should sign all records of special tests and forward to the Board such records with a report interpreting the results of the tests and recommending actions to be taken.

(F) The county's right under this section shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the Board has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

(Ord. 0-9-81, passed 7-19-81)

additional monies upon 60 days' prior written notice to the company. However, upon receipt of such notice, the company shall be entitled to initiate a petition for an equivalent rate increase pursuant to § 113.58, notwithstanding any other then

§ 113.38 COMPANY RULES AND REGULATIONS.

The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under the franchise and to assure an uninterrupted service to each and all of its customers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

(Ord. 0-9-81, passed 7-19-81)

§ 113.39 FRANCHISE FEE.

(A) For the reason that the streets of the county, Commonwealth, and cities to be used by the company in the operation of its system within the boundaries of the county are valuable public properties acquired and maintained by the county, Commonwealth, and cities at great expense to its taxpayers, and that the grant to the company to the said streets is a valuable property right without which the company would be required to invest substantial capital in right-of-way costs and acquisitions, the company shall pay to the Board an amount equal to 3% of the company's gross annual revenue from all sources attributable to the operations of the company within the confines of the franchise area. In the event that the law permits some larger basis for computing this fee, the Board shall, at its election, be entitled to collect such

pending or recently decided rate requests. In said event, the Board shall afford said rate increase petition a presumption of reasonableness and shall stay the effective date of said new fee until 60 days after its decision on said rate petition.

(B) It is the intent of the Board to utilize franchise fees as necessary to defray the costs of local regulation of the company, to support the development of the access channels and generally to encourage development of the system.

(C) This payment shall be in addition to any other tax or payment owed to the county, city, or other taxing jurisdiction by the company.

(D) The franchise fee and any other cost or penalties assessed shall be payable quarterly, and the company shall file a complete and accurate verified statement of all gross receipts within the franchise area during the period for which said payment is made. Said payment shall be made to the Board not later than 30 days after the expiration of each quarter year.

(E) In order to facilitate the initial operation of the Campbell County CATV Board, the company shall pay to the Board within 30 days of the franchise award, a sum of \$30,000. This sum shall be considered a pre-paid franchise fee and will be deducted from the annual franchise fee payment in equal amounts over the first ten years of system operation.

(F) The Board shall have the right to inspect the company's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within 36 months following the close of each of the company's fiscal years. Any additional amount due to the Board as a result of the audit shall be paid within 30 days following written notice to the company by the Board which notice shall include a copy of the audit report.

(G) In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate of 8% plus 5% penalty.

(Ord. 0-9-81, passed 7-19-81)

interest

(A) The franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the CATV Board. The company may, however, transfer or assign the franchise to a wholly owned subsidiary of the company and such subsidiary may transfer or assign the franchise back to the company without such consent. The proposed assignee must show financial responsibility as determined by the Board and must agree to comply with all provisions of the franchise. The Board shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to the company within 60 days following receipt of written notice of the proposed transfer or assignment.

(B) The company shall promptly notify the Board of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 10% of the voting shares of the company. Every change, transfer, or acquisition of control of the company shall make the franchise subject to cancellation unless and until the Board shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Board may inquire into the qualification of the prospective controlling party, and the company shall assist the Board in any such inquiry.

(C) The consent or approval of the Board to any transfer of the company shall not constitute a waiver or release of the rights of the county in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the franchise.

(D) In the absence of extraordinary circumstances, the Board will not approve any transfer or assignment of the franchise prior to substantial completion of construction of the proposed system.

(E) In no event shall a transfer of ownership or control be approved without the successor in

becoming a signatory to the franchise agreement.
(Ord. 0-9-81, passed 7-19-81)

§ 113.41 AVAILABILITY OF BOOKS AND RECORDS.

The company shall fully cooperate in making available at reasonable times, and the CATV Board shall have the right to inspect the books, records, maps, plans and other like materials of the company applicable to the CATV system, at any time during normal business hours provided that where volume and convenience necessitate, the company may require inspection to take place on company premises at the local office.
(Ord. 0-9-81, passed 7-19-81)

§ 113.42 OTHER PETITIONS AND APPLICATIONS.

Copies of all petitions, applications, communications and reports submitted by the company to the Federal Communications Commission, Securities and Exchange Commission (specifically 10K and 8K) or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise, shall be provided simultaneously to the Board.
(Ord. 0-9-81, passed 7-19-81)

§ 113.43 FISCAL REPORTS.

The company shall file annually with the Board, no later than 120 days after the end of the company's fiscal year, a copy of a financial report applicable to the CATV system including an income statement applicable to its operations during the preceding 12 month period, a balance sheet, and a statement of its properties devoted to CATV system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. These reports shall be certified as correct by an authorized officer of the company and there shall be submitted along with them such other reasonable information as the Board shall request with respect to the company's properties and expenses related to its CATV system operations within the county. The Board may hire an independent CPA to audit the company's financial records, in which case the company shall provide all necessary records to the CPA.
(Ord. 0-9-81, passed 7-19-81)

§ 113.44 REMOVAL OF CATV SYSTEM.

At the expiration of the term for which the franchise is granted, or upon its termination as provided herein, the company shall forthwith, upon notice by the Board, remove at its own expense all designated portions of the CATV system from all streets and public property within the county. If the company fails to do so, the county may perform the work at the company's expense. A bond shall be furnished by the company in an amount sufficient to cover this expense.

(Ord. 0-9-81, passed 7-19-81)

capacity of the system.

(E) The company shall have available equipment and other related production and post production

§ 113.45 REQUIRED SERVICES AND FACILITIES.

(A) The cable television system shall have a minimum channel capacity of 35 channels. Immediately upon system activation, at least one level of cable television services must utilize a minimum of 35 activated channels.

(B) Such system shall maintain a plant having the technical capacity for non-voice return, or "two-way" communications. Two-way capability shall be activated from identified user locations upon reasonable notice by the Board to the company.

(C) The company shall maintain the following:

(1) At least one specially-designated, noncommercial public access channel available on a first-come, nondiscriminatory basis;

(2) At least two specially-designated channels for use by local educational authorities;

(3) At least one specially-designated channel for local government uses; and

(4) At least one specially-designated channel for leased access uses.

(D) Whenever any of the channels as set forth in divisions (C)(1), (C)(2), (C)(3), or (C)(4) are in use during 60% of the time between the hours of 9:00 a.m. and 6:00 p.m. and 80% of the time between the hours of 6:00 p.m. and 10:00 p.m. on weekdays (Monday through Friday) for 16 consecutive weeks, the company shall make an additional channel available for the same purpose up to the channel

facilities for local production and presentation of cablecast programs other than automated services and shall permit its use for the production and presentation of public access programs.

which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the county.

(F) All subscribers receiving channels showing first-run movies and special entertainment events shall be provided with a key-lock device which prevents the unauthorized viewing of such channels.

(G) The company shall incorporate into its cable television system the capacity which will permit the county, in times of emergency, to override, by remote control, the audio portion of all channels simultaneously. The company shall designate a channel which will be used for emergency broadcasts of both audio and video. The company shall cooperate with the county in the use and operation of the emergency alert override system.

(H) Area-wide interconnection of CATV systems.

(1) Interconnection required: The company shall interconnect origination and access channels of the cable system with any or all other CATV systems in adjacent areas, upon the directive of the Board. Interconnection of systems may be done by direct cable connection, microwave link, satellite, or other appropriate method.

(2) Interconnection procedure: Upon receiving the directive of the Board to interconnect, the franchisee shall immediately initiate negotiations with the other affected system or systems in order that costs may be shared equally for both construction and operation of the interconnection link.

(3) Relief: The franchisee may be granted reasonable extensions of time to interconnect or the Board may rescind its order to interconnect upon petition by the franchisee to the county. The Board shall grant said request if it finds that the franchisee has negotiated in good faith and has failed to obtain an approval from the system or systems of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

(4) Cooperation required: The franchisee shall cooperate with any interconnection corporation, regional interconnection authority or the city, county, state and federal regulatory agency

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(5) Initial technical requirements to assure future interconnection capability:

(a) All cable systems receiving franchises to operate within the county shall use the standard frequency allocations for television signals.

(b) All cable systems are required to use signal processors at the headend for each television signal.

(c) The Board also urges franchisees to provide local origination equipment that is compatible throughout the area so that videocassettes or videotapes can be shared by various systems.
(Ord. 0-9-81, passed 7-19-81)

any time during the term of the franchise at the request of the Board or the company.

(C) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with KRS 424. The

ADMINISTRATION AND REGULATION**§ 113.55 RULES AND REGULATIONS.**

(A) In addition to the inherent powers of the county to regulate and control the franchise, and those powers expressly reserved by the county, or agreed to and provided for herein, the right and power is hereby reserved by the Board to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of the franchise.

(B) The county may also adopt such regulations at the request of the company upon application.
(Ord. 0-9-81, passed 7-19-81)

§ 113.56 PERFORMANCE EVALUATION SESSIONS.

(A) The CATV Board and the company shall hold scheduled performance evaluation sessions within 30 days of the third, sixth, ninth, and twelfth anniversary dates of the company's award of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

(B) Special evaluation sessions may be held at

company shall notify its subscribers of all evaluation sessions by announcement on at least two of the highest-rated designation channels of its system between the hours of 7:00 p.m. and 9:00 p.m., for five consecutive days preceding each session.

have the authority to review the following rates, fees

(D) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this chapter; judicial and FCC rulings; line extension policies; and company or County rules.

(E) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of 50 or more residents of the franchise territory, 18 years of age or older, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session. (Ord. 0-9-81, passed 7-19-81)

§ 113.57 INITIAL RATES; REQUEST TIMING; DETERMINATION OF AUTHORITY.

(A) Initial rates.

(1) The company shall establish initial rates for its services in accordance with the rates contained in the company's application for the franchise.

(2) Initial basic subscriber rates shall be effective for a minimum of three years from the date of the franchise award.

(3) The company shall waive basic service subscriber installation fees for a reasonable period of time as each segment of the system in the county is activated.

(B) Minimum timing of requests. The company may request a rate change at any time after three years of the franchise award, provided that not more than one request may be made by the company in any 12-month period. (Ord. 0-9-81, passed 7-19-81)

§ 113.58 RATE CHANGE PROCEDURES.

(A) Rates subject to review. The Board shall

and charges:

(1) Rates for the provision of basic service to subscribers, whether residential or commercial.

(2) Rates for the connection, installation and reinstatement (including converters) of basic service, whether residential or commercial.

(3) Rates for installation, connection and reinstatement of basic service where unusual circumstances exist such as remote or inaccessible subscriber locations or subscriber requested underground service drops.

(B) The company may petition the Board for a change in rates by filing, in triplicate, a proposed rate schedule with the County Clerk, which petition shall include the justification for the proposed schedule. Said petition shall be at least 90 days prior to the requested implementation date of the rate change. One copy of the petition shall remain on file with the County Clerk and be open for public inspection.

(C) Within 90 days of the filing of the petition for rate change, the Board shall hold an appropriate public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including the company, shall be heard on any matter, including but not limited to, the performance of the franchise, the company's services, and the proposed new rates.

(D) Upon notice of any public hearing as provided in division (C) above, the company shall notify its subscribers of the time, place and subject matter of the public hearing by announcement on at least two of the highest-rated origination channels of its system between the hours of 7:00 p.m. and 9:00 p.m., for at least five consecutive days prior to the hearing. In addition, notice of any public hearing shall be published in a newspaper of general circulation at least once, but may be published two or more times provided that one publication occurs not less than seven nor more than 21 days before the public hearing. Each advertisement must be two column inches in height and four column inches long. The company shall be responsible for publication and associated costs.

(E) Within 90 days after the hearing, the Board

shall render a written decision on the company's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis of its decision. The Board shall consider, inter alia, the

following factors in approving or disapproving the petition:

(1) The ability of the company to render system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;

(2) The revenues and profits derived from system services;

(3) The efficiency of the company;

(4) The quality of the service offered by the company;

(5) The original cost of the system less depreciation;

(6) A fair rate of return with respect to the cost of borrowing and the rates of return on investments having similar risks to that of cable television;

(7) The extent to which the company has adhered to the terms of this agreement; and

(8) Fairness to county residents, subscribers and users.

The Board shall not consider any valuation based upon the franchise or the company's goodwill and these items of value shall neither be amortized as an expense nor shall a return be paid on them.

(F) If the Board fails to render a written decision either accepting, rejecting, modifying, or deferring the company's petition within 90 days after said hearings, the company shall thereafter be entitled to put its proposed new rates into effect on a provisional basis, provided that it shall keep a full and accurate accounting of all income resulting from said provisional rates and shall be obliged for a period of 90 days thereafter to refund the amount by which said provisional rates exceed the rates ultimately established by the Board. Upon request by the Board, the company shall provide a bond or other reasonable surety to insure that possible refunds due under this subsection shall be promptly made. The bond or surety shall be in an amount not to exceed the difference between the amount of revenues generated in 90 days at the previously existing rates and the amount of revenues expected to be generated in 90 days at the provisional rates.

(G) If no final decision on the company's petition has been rendered by the Board within 180 days of

the hearing, the company's petition will be deemed approved.

(H) Action of the Board is final and not appealable.

(I) (1) The company's petition for a rate increase shall include, but not be limited to, the following financial reports, which shall reflect the operations of the Campbell County system only:

(a) Balance sheet.

(b) Income statement.

(c) Cash flow statement.

(d) Statement of sources and applications of funds.

(e) Detailed supporting schedules of expenses, income, assets and other items as may be required.

(f) Statement of current and projected subscribers and penetration.

(2) The company's accounting records applicable to the Campbell County system shall be available for inspection by the county at all reasonable times. The Board shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Campbell County operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the Board with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of the company.

(Ord. O-9-81, passed 7-19-81)

§ 113.59 CAMPBELL COUNTY CATV BOARD.

Editor's Note: For provisions regarding the Campbell County Cable Board, please see the Interlocal Agreement adopted by Ordinance No. O-19-93, passed January 5, 1994. The Interlocal Agreement was further amended by Resolution No. R-06-06 and R-56-06

§ 113.60 PENALTIES.

For the violation of any of the following provisions of this chapter, penalties shall be chargeable to the

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letter of credit as follows:

(A) For failure to complete system construction and provide service in accordance with § 113.31 unless the Board specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond the company's control, the company shall pay \$500 per week for each week, or part thereof, the deficiency continues.

(B) For failure to provide data, documents, reports, or information as required by §§ 113.38, 113.40, 113.41, 113.42, and § 113.58, the company shall pay \$50 per day for each day the violation occurs or continues.

(C) For failure to test, analyze and report on the performance of the system following a request pursuant to § 113.37, the company shall pay \$50 per day for each day, or part thereof, that such noncompliance continues.

(D) For failure to comply with the operational standards following the Board's resolution directing the company to make improvements pursuant to § 113.35, the company shall forfeit \$200 per day or part thereof that the violation continues.
(Ord. 0-9-81, passed 7-19-81)

(4) Failure to provide the services promised in the company's application as incorporated herein

§ 113.61 FORFEITURE AND TERMINATION.

(A) In addition to all other rights and powers retained by the Board under the franchise or otherwise, the Board reserves the right to forfeit and terminate the franchise and all rights and privileges of the company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the company shall include, but shall not be limited to the following:

(1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the Board made pursuant to the franchise;

(2) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the county or its subscribers or customers;

(3) Failure to begin or complete system construction or system extension as provided under § 113.31;

by § 113.04;

(5) Failure to restore services after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the Board; or

(6) Material misrepresentation of fact in the application for or negotiation of the franchise.

(B) The foregoing shall not constitute a major breach if the violation occurs but it is without fault of the company or occurs as a result of circumstances beyond its control. The company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(C) The Board may make a written demand that the company comply with any such provision, rule, order, or determination under or pursuant to the franchise. If the violation by the company continues for a period of 30 days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the county may place the issue of termination of the franchise before the CATV Board. The Board shall cause to be served upon the company at least 20 days prior to the date the Board considers the issue of termination, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Board is to consider.

(D) The CATV Board shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the company has occurred.

(E) If the CATV Board shall determine the violation by the company was the fault of the company and within its control, the Board may, by resolution, declare that the franchise of the company shall be forfeited and terminated unless there is compliance within such period as the CATV Board may fix, such period not to be less than 60 days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(F) The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board then may terminate the franchise forthwith upon finding that the company has failed to achieve

compliance or may further extend the period, in its discretion.

(Ord. 0-9-81, passed 7-19-81)

§ 113.62 FORECLOSURE.

Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system, or upon the termination of any lease covering all or a substantial part of the CATV system, the company shall notify the Board of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place and the provisions of the franchise governing the consent of the CATV Board to such change in control of the company shall apply.

(Ord. 0-9-81, passed 7-19-81)

§ 113.63 RECEIVERSHIP.

The Board shall have the right to cancel the franchise 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(A) Within 120 days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder; and

(B) Such receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the company.

(Ord. 0-9-81, passed 7-19-81)

§ 113.64 PURCHASE OF CATV SYSTEM BY COUNTY.

(A) Rights to purchase. In the event the company forfeits and the county terminates the franchise pursuant to provisions of this chapter, or at the normal expiration of the franchise term, the

county shall have the right, directly or as an intermediary, to purchase the CATV system.

(B) Franchise valuation. The value of the franchise shall be the aggregate of the replacement

value of tangible assets and the going concern value of the CATV system.

(C) Replacement value and goodwill.

(1) "Replacement value" shall be determined by the unit-in-place method.

(2) The "going concern value" shall mean the benefits that attach to the business as a result of its location in the county, the company's regulation among franchise subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of old subscribers or acquisition of new subscribers; except no value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to the company out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of cable CATV system revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

(D) Relocation. In the acceptance of the franchise the company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

(E) Date of valuation. The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date the county makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

(F) Transfer to county. Upon exercise of this option and the payment of the above sum by the county and its service of official notice of such action upon the company, the company shall immediately transfer to the county possession and title to all facilities and property, real and personal, of the CATV system, free from any and all liens and encumbrances not agreed to be assumed by the county in lieu of some portion of the purchase price set forth above; and the company shall execute such warranty deeds or other instruments of conveyance to the county as shall be necessary for this purpose.

(G) Arbitration of value and costs.

(1) In the event the county and the company cannot agree upon the value of the CATV system, either may give notice of a demand to the other for arbitration.

(2) Arbitration shall commence and proceed according to law except as follows:

(a) The parties shall, within 15 days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within 15 days.

(b) Within 30 days after appointment of all arbitrators and upon ten day's written notice to parties, the Board of Arbitrators shall commence a hearing on the issue of valuation.

(c) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the County Attorney.

(d) At the close of the hearings and within 30 days, the Board of Arbitrators shall prepare findings and a decision agreed upon by a majority of the Board which shall be filed with the county and served by mail upon the company. Unless the parties extend by mutual agreement the time which the Board of Arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew.

(e) The decision of the Board shall be final and binding upon the parties.

(f) Either party may seek judicial relief in the following circumstances:

1. A party fails to select an arbitrator;
2. The arbitrators fail to select a third arbitrator;
3. One or more arbitrators is unqualified;
4. Designated time limits have been exceeded;
5. The Board has not proceeded expeditiously; and

6. Based upon the record, the Board abused its discretion.

(g) In the event a court of competent jurisdiction determines the Board of Arbitrators has

abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.

(h) Cost of arbitration shall be borne equally unless the Board of Arbitrators finds the offer of the county or the demand of the company was unreasonable, in which case, costs may be apportioned so that less or none of the costs may be borne by one party.

(Ord. 0-9-81, passed 7-19-81)

§ 113.65 COMPLIANCE WITH STATE AND FEDERAL LAWS.

(A) Notwithstanding any other provisions of the franchise to the contrary, the company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. However, if any such state or federal law or regulation shall require the company to perform any service, or shall permit the company to perform any service, or shall prohibit the company from performing any service, in conflict with the terms of the franchise or of any law or regulation of the county, then as soon as possible following knowledge thereof, the company shall notify the CATV Board of the point of conflict believed to exist between such regulation or law and the laws or regulations of the county or the franchise.

(B) If the CATV Board determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the Board shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

(Ord. 0-9-81, passed 7-19-81)

§ 113.66 LANDLORD/TENANT.

(A) Interference with cable service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication company regulated by and lawfully operating under a valid and existing cable communication franchise issued by the county.

(B) Gratuities and payments to permit service

prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

(C) Penalties and charges to tenants for service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a company operating under a valid and existing cable communication franchise issued by the county.

(D) Reselling service prohibited. No person shall resell, without the expressed, written consent of both the company and the CATV Board, any cable service, program or signal transmitted by a cable communication company operating under a franchise issued by the county.

(E) Protection of property permitted. Nothing in this subchapter shall prohibit a person from requiring that cable communications system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

(F) Risks assumed by company. Nothing in this subchapter shall prohibit a person from requiring a cable communication company from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

(Ord. 0-9-81, passed 7-19-81) Penalty, see § 113.99

conduit, equipment or apparatus of the company, or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenance of the company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to the

§ 113.67 THEFT OF SERVICES AND TAMPERING.

No person, whether or not a subscriber to the cable system, may intentionally or knowingly damage or cause to be damaged any wire, cable,

company, or to obtain cable television or other communications service with intent to cheat or defraud the company of any lawful charge to which it is entitled.

(Ord. 0-9-81, passed 7-19-81) Penalty, see § 113.99

§ 113.99 PENALTY.

Any person convicted of violating any provision of § 113.66 or § 113.67 is subject to a fine of not less than \$50 nor more than \$500 for each offense. Each day's violation of either of these sections shall be considered a separate offense.

(Ord. 0-9-81, passed 7-19-81)

CHAPTER 114: INSURANCE COMPANIES

Section

- 114.01 Imposition of license fee
- 114.02 Amount of fee for companies issuing policies other than life insurance
- 114.03 Due date; interest
- 114.04 Written breakdown of collections
- 114.05 Collection of license fee; record

§ 114.01 IMPOSITION OF LICENSE FEE.

There is hereby imposed on each insurance company a license fee for the privilege of engaging in the business of insurance within Campbell County, beginning July 1, 2004 and thereafter on a calendar year basis.

(Ord. O-14-90, passed 7-18-90; Am. Ord. O-03-04, passed 3-3-04)

§ 114.02 AMOUNT OF FEE FOR COMPANIES ISSUING POLICIES OTHER THAN LIFE INSURANCE.

The license fee imposed upon each insurance company which issues any insurance policy which is not a life or health insurance policy shall be 10% of the premiums actually collected by such company within each calendar quarter by reason of the issuance of such policies on risks located within Campbell County, on those classes of business which such company is authorized to transact, less all premiums returned to policy holders. The fee shall include the premiums on new policies and contracts of insurance and on renewal business, as well as all other classes of premiums. Any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or death caused thereby, under the provisions of the Workers' Compensation Act.

(Ord. O-14-90, passed 7-18-90; Am. Ord. O-03-04, passed 3-3-04)

§ 114.03 DUE DATE; INTEREST.

All license fees imposed by this chapter shall be due no later than 30 days after the end of each calendar quarter. Any license fee not paid on or before the due date shall bear interest at the tax interest rate under KRS 131.010(6) from the date due until paid.

(Ord. O-14-90, passed 7-18-90; Am. Ord. O-03-04, passed 3-3-04)

§ 114.04 WRITTEN BREAKDOWN OF COLLECTIONS.

Every insurance company subject to the license fees imposed by this chapter shall annually, by March 31, furnish Campbell County with a written breakdown of all collections in the preceding calendar year for the following categories of insurance:

- (A) Casualty.
- (B) Automobile.
- (C) Inland marine.
- (D) Fire and allied perils.

(Ord. O-14-90, passed 7-18-90; Am. Ord. O-03-04, passed 3-3-04)

§ 114.05 COLLECTION OF LICENSE FEE; RECORD.

It shall be the duty of the Campbell County License Fee Tax Collector to collect and account for the license fees imposed by this chapter. The Occupational Tax Collector shall keep records showing the amount received from each licensee and the date of such receipt. The Campbell County License Fee Collector is hereby directed to transmit a copy of this chapter, and any amendment thereto, to the Commissioner of Insurance, Commonwealth of Kentucky.

(Ord. O-14-90, passed 1-18-90; Am. Ord. O-03-04, passed 3-3-04)

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CHAPTER 115: RENTAL MOTOR VEHICLES LICENSE FEE

Section

- 115.01 Definitions
- 115.02 License fee
- 115.03 Collection
- 115.04 Exemptions
- 115.05 Right to review books
- 115.06 Allocation
- 115.07 Interlocal cooperation agreement

- 115.99 Penalty

§ 115.01 DEFINITIONS.

The following terms shall have the following meaning unless the context clearly indicates otherwise:

ACT. KRS 68.200.

COUNTIES. Boone, Campbell and Kenton Counties.

GROSS RENTAL CHARGE. Shall be as defined in KRS 138.462(4);

INTERLOCAL AGREEMENT. The Interlocal Cooperation Agreement attached to Ordinance No. O-15-94, passed 10-19-94 as Exhibit A;

MOTOR VEHICLE. Shall be as defined in KRS 186.010.

RETAILER. Shall be as defined in KRS 139.110(1)(a).

TAX INTEREST RATE. The interest rate as determined by the Kentucky Commissioner of Revenue pursuant to KRS 131.183. (Ord. O-15-94, passed 10-19-94)

§ 115.02 LICENSE FEE.

A license fee is hereby levied on the rental of motor vehicles in the amount of three percent of the

gross rental charges from rental agreements for periods of 30 days or less (the license fee), effective January 1, 1995. The license fee shall apply to rentals by retailers who receive more than 75% of their gross revenues generated in this county from gross rental charges. (Ord. O-15-94, passed 10-19-94)

§ 115.03 COLLECTION.

From and after the effective date, all retailers shall collect the license fee from the renters of motor vehicles, for rental agreements commencing on or after the effective date. The retailers shall pay the county from which such rental originated on a quarterly basis no later than 20 days after the end of each September, December, March and June, the license fees collected for the previous quarter. Commencing on the effective date, all retailers shall maintain such records as are prescribed by the county to permit a determination of the amount of license fees owed to the county, a determination that the exemptions pursuant to § 115.04 were properly allowed, to otherwise allow the county to levy, assess and collect the license fee owed pursuant to this chapter and to otherwise effectuate the purposes of this chapter. (Ord. O-15-94, passed 10-19-94) Penalty, see § 115.99

§ 115.04 EXEMPTIONS.

Revenues from rental of motor vehicles shall not be included in the gross rental charges on which the license fee is based if:

(A) The declared gross weight of the motor vehicle exceeds 11,000 pounds; or

(B) The rental is part of the services provided by a funeral director for a funeral; or

(C) The rental is exempted from the state sales and use tax pursuant to KRS 139.470. (Ord. O-15-94, passed 10-19-94)

§ 115.05 RIGHT TO REVIEW BOOKS.

From and after the effective date, the county has the authority to verify, audit, inspect, review, and copy the accounts, books, receipts and other papers of all retailers with operations in the county for the purpose of ascertaining that all proper amounts have been collected as required by this chapter and that any exemptions pursuant to § 115.04 were properly allowed.

(Ord. O-15-94, passed 10-19-94)

§ 115.06 ALLOCATION.

The county will place all funds collected pursuant to this chapter (including without limitation all license fees, penalties, interest, overpayments and other revenues collected or otherwise derived hereunder) in a separate account of the county known as its Motor Vehicle License Account; provided that prior to such deposit the county may retain an amount not to exceed three percent of the amount collected as reimbursement for its costs incurred for collecting the license fees. At least monthly, all of the funds deposited in such account will be paid and disbursed to TRI-ED for purposes of sharing such revenues among the counties pursuant to KRS 68.200(4). Funds will be paid to no other party out of such account. All of the proceeds of the license fee shall be used by TRI-ED for economic development activities, and for no other purposes whatsoever. TRI-ED shall provide the county such information at such times as is required for the county to determine that the use of the license fee revenues are in accordance with the requirements of the Act.

(Ord. O-15-94, passed 10-19-94)

§ 115.07 INTERLOCAL COOPERATION AGREEMENT.

The Fiscal Court hereby approves and authorizes delivery of the Interlocal Agreement in substantially the form attached to Ordinance O-15-94, passed 10-19-94, as Exhibit A, and authorizes the execution thereof by the Judge/Executive.

(Ord. O-15-94, passed 10-19-94)

§ 115.99 PENALTY.

Unless waived by the Judge/Executive for purposes for fairness in application of the license fee, any retailer who fails to remit and pay the license fees to the county when the same become due shall be charged a penalty of five percent if the delay is not more than one month, or a fraction thereof, with an additional five percent for each additional month or fraction thereof, but not over a total of 25% of the amount of such unpaid license fees and interest shall be payable on all license fees and penalties imposed by this chapter which remain unpaid at a rate equal to the tax interest rate from the date such amounts were due until the date paid.

(Ord. O-15-94, passed 10-19-94)

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CHAPTER 116: TEMPORARY OFF-SITE SALES OF MOTOR VEHICLES

Section

- 116.01 Intent
- 116.02 Temporary off-site sales or display events
- 116.03 Time limits for displays
- 116.04 Permit required
- 116.05 Application contents
- 116.06 Review of Zoning Administrator
- 116.07 Fee
- 116.08 Sales and contracts allowed
- 116.09 Limit of permits on each site
- 116.10 Non-applicability to yard sales or sidewalk sales

emergency vehicles, shall be a prime consideration when evaluating the location of the displays. All types of displays must be

§ 116.01 INTENT.

The intent of these regulations is to permit the sale of motor vehicles under particular circumstances and to benefit of the general public by allowing temporary off-site sales or display events (i.e. "Tent Sales") of motor vehicles by dealers on hard surfaced areas with adequate parking for both the principle use as well as the temporary off-site sales or display event. Such displays are subject to certain requirements and, if these requirements cannot be satisfied, the display is prohibited.

(Ord. O-12-04, passed 5-21-04)

§ 116.02 TEMPORARY OFF-SITE SALES OR DISPLAY EVENTS.

(A) Temporary off-site sales or display events are permitted on hard-surfaced areas located in the INST (Institutional) zone with properties that have a minimum lot size of 340 acres, subject to the terms and provisions of these regulations and other provisions of the zoning regulations as applicable.

(B) The construction of temporary off-site sales or display events shall be stationary in nature such as when conducted in tents and buildings and shall not be mobile in nature as if conducted from a truck or other vehicle. Safety in terms of vehicular circulation, fire separation and accessibility for

positioned so that the existing vehicular and pedestrian traffic flow is not impeded. All applicable building, fire and health codes must also be met.
(Ord. O-12-04, passed 5-21-04)

§ 116.03 TIME LIMITS FOR DISPLAYS.

Temporary off-site sales or display events cannot exist or be present on a site in any form, whether open for viewing or not, more than seven consecutive days.
(Ord. O-12-04, passed 5-21-04)

§ 116.04 PERMIT REQUIRED.

Prior to placing any temporary off-site sales or display event on any property, the person or persons owning or having control or supervisory authority of such display shall apply and be required to obtain a permit from the Zoning Administrator for the event.
(Ord. O-12-04, passed 5-21-04)

§ 116.05 APPLICATION CONTENTS.

(A) The application must contain the following information and be submitted with three copies of the appropriate drawings or plans:

(1) Name, address, telephone number and signature of the owner of the property where the display is proposed to be located.

(2) Indicate any existing development, structures and types of uses on the site as well as on adjoining sites of the proposed temporary off-site sales or display event.

(3) Show the dimensions and location of the area to be used for the temporary offsite sales or display event on the site. The front, side, and rear setbacks of the area to be used for the display must also be indicated.

(4) Estimate the maximum number of parking spaces to be used by the temporary off-site sales or display event; the number of parking spaces to be "borrowed" from the site's principle use.

(5) Accurately state and describe the amount and type of goods or services to be on display.

(Ord. O-12-04, passed 5-21-04)

(6) State the dates the display is to be located on the site.

(7) Depict all structures regardless of nature to be part of the temporary off-site sales or display event, including tents, canopies, fences or barriers of any kind.

(8) Indicate traffic access to the temporary off-site sales or display event as well as parking and vehicular circulation areas.

(9) Indicate anticipated flow of pedestrian and vehicular traffic, if applicable, on the site relative to existing commercial or recreational developments and the temporary off-site sales or display event.

(B) The Zoning Administrator shall review the application and determine whether or not the plan conforms with these regulations and all other applicable provisions of the zoning regulations.
(Ord. O-12-04, passed 5-21-04)

§ 116.06 REVIEW OF ZONING ADMINISTRATOR.

The Zoning Administrator is permitted to issue a permit for the temporary off-site sales or display event upon receiving a completed application containing all the information required in these regulations and all other provisions of the zoning regulations, as well as the full applicable fee. After reviewing the completed application, the Zoning Administrator may issue a permit if all applicable requirements have been fulfilled. Any deviation in the location of a display from the requirements of the zoning regulations must be approved in advance by the Zoning Administrator.
(Ord. O-12-04, passed 5-21-04)

§ 116.07 FEE.

At the time of application for a temporary off-site sales or display event permit, the applicant shall pay in full to the county a fee as indicated in the then current CC&MP&ZC fee schedule. The fee shall initially be set at \$250.00 per permit application.

§ 116.08 SALES AND CONTRACTS ALLOWED.

At any temporary off-site sales or display event for which a permit has been issued, sales or contracts for selling or providing the goods or services that are the subject of the approved temporary off-site sales or display event shall be allowed, provided the seller has all appropriate business, sales, and/or occupational licenses, etc. (Ord. O-12-04, passed 5-21-04)

§ 116.09 LIMIT OF PERMITS ON EACH SITE.

The purpose of these regulations is to provide access by the public to commercial displays, exhibits or events of limited duration rather than to establish a regular or long-term use of land. Thus, no permit shall be issued for a site under these regulations that has had three prior temporary off-site sales or display event permits issued during the same calendar year for the same site. (Ord. O-12-04, passed 5-21-04)

§ 116.10 NON-APPLICABILITY TO YARD SALES OR SIDEWALK SALES.

These regulations shall not apply to regulate or prohibit yard sales where articles or goods are displayed for sales at a person's dwelling and where articles so displayed are personal belongings of such person. Nor shall these regulations apply to sidewalk sales by a commercial establishment that regularly does business on the same premises, where the articles or goods on outdoor display are the same as are usually displayed for sale at its establishment. (Ord. O-12-04, passed 5-21-04)

CHAPTER 117: SEXUALLY ORIENTED BUSINESS ACTIVITY

Section		adopting this chapter. (Ord. O-17-06, passed 1-3-07)
117.01	Findings	
117.02	Applicability and conflicting provisions	
117.03	Definitions	
117.04	Business privilege licenses required	
117.05	Types of licenses and license fees	
117.06	Application for establishment license	
117.07	Application for manager, entertainer, or escort license	
117.08	Criteria for issuance of license	
117.09	Approval or denial of license	
117.10	Issuance of temporary license	
117.11	Remedies upon denial of license	
117.12	License period and renewals	
117.13	Posting or filing of licenses on premises	
117.14	Affirmative duties of sexually oriented business, service oriented escort bureaus and managers	
117.15	Additional affirmative duties and violations for service oriented escort bureaus	
117.16	Notification and enforcement of point assessment	
117.17	Enforcement for violation of chapter	
117.18	Burden of proof in suspension or revocation hearing; presumptions	
117.19	Judicial review and stay of enforcement of orders	
117.20	Informal disposition of contested cases	
117.21	Compliance with other regulations	
117.22	Inspections	
117.23	Effective date of chapter; existing businesses	
117.24	Countywide applicability	
117.99	Violation of chapter; penalty	

§ 117.01 FINDINGS.

The facts and other matters set forth in the "Whereas" clauses that form the preamble to this chapter are hereby adopted as findings of fact in support of the legislative action of the Fiscal Court in

§ 117.02 APPLICABILITY AND CONFLICTING PROVISIONS.

(A) *License applicability and conflicts.* The licenses provided for in this chapter are subject to the general provisions of this chapter. In the event of a conflict between the provisions of this chapter and other parts of this chapter or code, the provisions of this chapter shall control.

(B) *Licenses and fees additional.* The licenses and fees required by this chapter shall be in addition to any other licenses and fees required by this code, or any other applicable authority. (Ord. O-17-06, passed 1-3-07)

§ 117.03 DEFINITIONS.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, except where the context clearly indicates otherwise:

APPLICANT. An owner [including any spouse

of individual owners], manager, or entertainer who has applied for or is applying for a sexually oriented business license or manager's or entertainer's sexually oriented business license.

CABARET OR THEATER SEXUALLY ORIENTED. A building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to "adult entertainment," "strippers," "showgirls," "exotic dancers," "gentleman's club," "XXX" or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.

CUSTOMER. Any person who:

- (1) Is allowed to enter a business in return for the payment of an admission fee or any other form of consideration or gratuity; or

(2) Enters a business and purchases, rents, or otherwise partakes of any material, merchandise, goods, entertainment, or other services offered therein; or

(3) Enters a business other than as an employee, vendor, service person, or delivery person.

salary, and who for said consideration consorts with or accompanies or offers to consort with or accompany, another or

DISPLAY PUBLICLY. The act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others or from any portion of the premises where items and material other than sexually oriented media are offered for sale or rent to the public.

EMPLOYEE. Any person who renders any service whatsoever for or to the customers of an establishment subject to this chapter or who works in or about an establishment subject to this chapter.

ENCOUNTER CENTER, SEXUALLY ORIENTED. A business or enterprise that, as one of its principal purposes, offers: physical contact between two or more persons when one or more of the persons is in a state of nudity or semi-nudity.

ENTERTAINER. See **SEXUALLY ORIENTED ENTERTAINER.**

ENTERTAINER, SEXUALLY ORIENTED. Any person paid as an employee, contractor, subcontractor, or agent of the operator of a cabaret who frequently appears in a state of semi-nudity at any establishment regulated by this chapter.

ENTERTAINMENT, SEXUALLY ORIENTED. Any of the following activities, when performed by a sexually oriented entertainer at a sexually oriented business that is required to be licensed under this chapter: dancing, singing, talking, modeling (including lingerie or photographic), gymnastics, acting, other forms of performing, or individual conversations with customers for which some type of remuneration is received.

ESCORT. A person who is held out to the public to be available for hire for monetary consideration in the form of a fee, commission, or

others to or about social affairs, entertainments, or places of amusement or within any place of public resort or within any private quarters, and shall include a "service oriented escort;" for purposes of this chapter, the term **ESCORT** shall not include any person who would be understood by a reasonably prudent person as providing "babysitting" services or working as an assisted living companion to the elderly, infirm, disabled, or handicapped, and shall further not include licensed health professionals.

ESCORT BUREAU OR ESCORT BUREAU. A person, as defined herein who for a fee, commission, profit, payment, or other monetary consideration, furnishes, refers, or offers to furnish or refer escorts, or provides or offers to introduce patrons to escorts, and shall include a "service oriented escort bureau," as further defined herein.

ESCORT PATRON. A customer or any person who contracts with or employs, or for monetary consideration, hires an escort, individually or through an escort bureau.

ESTABLISHMENT. Any business regulated by this chapter.

EXPLICIT SEXUAL MATERIAL. Any pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation of unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or material of anthropological significance shall not be deemed to fall within the foregoing definition.

FREQUENTLY. Two or more times per month.

GROSS PUBLIC FLOOR AREA. The total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled "public"), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways, and entryways serving such areas.

MANAGER. A person designated by the owner or operator to be responsible for the operation of a business at a particular location at a particular time; when the owner, proprietor, or other principal in the business is present, such person may be considered the manager.

MASSAGE. Touching, stroking, kneading, stretching, friction, percussion, and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).

MASSAGE PARLOR. Any business offering massages that is operated by a person who is not a "massage therapist" or that provides massages by persons who are not massage therapists.

MASSAGE THERAPY. The profession in which a certified massage therapist applies massage techniques with the intent of positively affecting the health and well being of the client.

MASSAGE THERAPIST. A person, who has graduated from a 600-hour massage therapy school, is accredited by a state licensure board or its equivalent, and who possesses a valid state license in massage therapy from any state that regulates the same by means of a written examination. He or she must have received professional training and completed the national certification process and has been certified by the National Certification Board for Therapeutic Massage and Bodywork, the American Massage Therapy Association, or any equivalent nationally recognized accreditation body, or has received a license from any state that regulates massage therapy, to administer the same.

MEDIA, SEXUALLY ORIENTED. Magazines, books, videotapes, movies, slides, CDs, DVDs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

MEDIA. Anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, DVDs, other magnetic media, and undeveloped pictures.

MEDIA STORE, SEXUALLY ORIENTED. An establishment that rents and/or sells sexually

oriented media, and that meets any of the following three tests:

(1) More than 40% of the gross public floor area is devoted to sexually oriented media; or

(2) More than 40% of the stock in trade consists of sexually oriented media; or

(3) It advertises or holds itself out in any forum as a "XXX," "adult" or "sex" business, or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater, or sexually oriented cabaret.

MODELING STUDIO, SEXUALLY ORIENTED.

An establishment or business that provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples, or small groups.

MOTEL, SEXUALLY ORIENTED. A hotel, motel, or similar commercial establishment that meets any of the following criteria:

(1) Offers accommodations to the public for any form of consideration and provides patrons with sexually oriented entertainment or transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;"

(2) Marketed as or offered as "adult," "XXX," "couples," or "sexually oriented."

MOTION PICTURE ARCADE, SEXUALLY ORIENTED.

A building or portion of a building wherein coin-operated, slug-operated, or for any other form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images of "specified sexual activities" or "specified anatomical areas."

MOTION PICTURE ARCADE BOOTH, SEXUALLY ORIENTED.

Any booth, cubicle, stall, or compartment that is designed, constructed, or used to hold or seat customers and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital, or other

means or medium (including, but not limited to, film,

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video or magnetic tape, laser disc, CD-ROMs, books, DVDs, magazines or periodicals) to show images of "specified sexual activities" or "specified anatomical areas" for observation by customers therein. The term "booth," "arcade booth," "preview booth," and "video arcade booth" shall be synonymous with the term "motion picture arcade booth."

MOTION PICTURE THEATER, SEXUALLY ORIENTED. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are frequently shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" or that are marketed as or offered as "adult," "XXX," or sexually oriented. Frequently shown films, motion pictures, videocassettes, slides or other similar photographic reproductions as characterized herein do not include sexually oriented speech and expressions that take place inside the context of some larger form of expression.

NUDE MODEL STUDIO. Any place where a person who appears in a state of nudity or semi-nudity and is to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the Commonwealth of Kentucky or a college, junior college, or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

NUDITY OR STATE OF NUDITY. The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernibly turgid state. See, also, Semi-nude.

OPEN OFFICE. An office that is open and accessible to the general public during regular business of the business, which is staffed with management and office staff during such business hours, and at which the business maintains its records, including those required by public

agencies. For additional standards applicable to an "open office" for an escort bureau, see § 117.15(B).

OPERATOR. Any person operating, conducting, or maintaining a business regulated under this chapter.

OWNER(S). The individual owner of an establishment, or if the legal owner is a corporation, partnership, or limited liability company, the term shall include all general partners, any limited partner with a financial interest of 10% or more, all corporate officers and directors, and any shareholder or member with a financial interest of 10% or more. **OWNER** includes the spouse(s) of any of the above individuals.

PERSON. An individual, firm, partnership, joint-venture, association, independent contractor, corporation (domestic or foreign), limited liability company, trust, estate, assignee, receiver or any other group or combination acting as a unit.

PREMISES. The physical location at which a business operates; as used in this chapter, the term shall include all parts of that physical location, both interior and exterior, which are under the control of the subject business, through ownership, lease or other arrangement.

PRIMARY ENTERTAINMENT. Entertainment

that characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.

PUBLIC AREA. A portion of a sexually oriented business, excluding sexually oriented motels, that is accessible to the customer, excluding restrooms, while the business is open for business.

SADOMASOCHISTIC PRACTICES. Flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.

SEMI-NUDE OR IN A SEMI-NUDE CONDITION. The showing of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other apparel, provided the areola is not exposed in whole or in part.

SERVICE ORIENTED ESCORT. An escort that:

- (1) Operates from an open office;
- (2) Does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and
- (3) Does not offer to provide sexual conduct.

establishment whose primary purpose is to offer sexually oriented

SERVICE ORIENTED ESCORT BUREAU. An escort bureau that:

- (1) Maintains an open office at an established place of business;
- (2) Employs or provides only escorts who possess work identification cards;
- (3) Does not use an escort bureau runner;
- (4) Does not provide sexually oriented escorts; and
- (5) Does not advertise that sexual conduct will be provided to a patron.

SEX SHOP. An establishment offering goods for sale or rent and that meets any of the following tests:

- (1) It offers for sale items from any two of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; and the combination of such items constitute more than 10% of its stock in trade or occupies more than 10% of its floor area;
- (2) More than 5% of its stock in trade consists of sexually-oriented toys or novelties; or
- (3) More than 5% of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

SEXUALLY ORIENTED BUSINESS. An inclusive term used to describe collectively the following businesses: sexually oriented cabaret or theater; sexually oriented entertainment; sexually oriented motion picture theater; sexually oriented motion picture arcade; sexually oriented encounter center; sexually oriented media store; bathhouse; massage parlor; sex shop; sexually oriented modeling studio; or any other such business

entertainment or materials. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the county or any applicable municipal zoning code or other applicable ordinances.

SEXUALLY ORIENTED BUSINESS LICENSE.

Any license applied for under this chapter.

SEXUALLY ORIENTED ESCORT. An escort who:

(1) Works for (either as an agent, employee, or independent contractor), or is referred to a patron by a sexually oriented escort bureau;

(2) Either advertises that sexual conduct will be provided, or works for (either as an employee, agent, or independent contractor), or is referred to a patron by an escort bureau that so advertises; or

(3) Offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee from an escort patron or a prospective escort patron.

SEXUALLY ORIENTED ESCORT BUREAU. An escort bureau that operates in any of the following manners:

(1) Engages in fraudulent, misleading, or deceptive advertising that is designed to make the prospective client believe that acts of prostitution (as defined under Kentucky law) will be provided;

(2) Collects money (whether paid in advance or paid after the promised proscribed act) for the promise of acts of prostitution by its escorts;

(3) Uses as escorts persons known to have violated the law regarding prostitution, and refuses to cease the use of such a person;

(4) Operates an escort bureau as a "call girl" prostitution operation;

(5) Advertises that sexual conduct will be provided to a patron or customer, or that escorts which provide such sexual conduct will be provided, referred, or introduced to a patron or customer; or,

(6) Solicits, offers to provide, or does provide acts of sexual conduct to an escort patron or customer;

(7) Employs or contracts with a sexually oriented escort, or refers or provides to a patron a sexually oriented escort.

under suspension.

SEXUALLY ORIENTED TOYS OR NOVELTIES.

Instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs.

SPECIFIED ANATOMICAL AREAS. Include:

(1) Less than completely and opaquely covered human genitals, pubic region, or the areola or nipple of the female breast; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and

(3) Areas of the human anatomy included in the definitions of "nude" or "nudity."

SPECIFIED SEXUAL ACTIVITIES. Acts of human masturbation, sexual intercourse, or sodomy.

(1) These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises.

(2) This definition shall include apparent sexual stimulation of another person's genitals whether clothed or unclothed.
(Ord. O-17-06, passed 1-3-07)

§ 117.04 BUSINESS PRIVILEGE LICENSES REQUIRED.

(A) *Licenses for sexually oriented businesses and service oriented escort bureaus.*

(1) It shall be unlawful for any person to operate or maintain any sexually oriented business or a service oriented escort bureau in the county unless the owner(s) thereof has obtained from the License Inspector the appropriate license to operate such business and such license is current and not

(2) It shall be unlawful for any manager or service oriented escort to provide any service for a service oriented escort bureau unless that person has obtained from the License Inspector the appropriate license to provide such service and such license is current and not under suspension.

(B) *Licenses for managers and entertainers.* It shall be unlawful for any manager or entertainer to provide any service in or for a sexually oriented business unless that person has obtained from the License Inspector the appropriate license to provide such service and such license is current and not under suspension.

(C) *Operation of unlicensed business.* It shall be unlawful for any person to perform any service in a sexually oriented business or with a service oriented escort bureau when such business lacks a license under this chapter.

(D) *Operation of a business with a suspended license.* It shall be unlawful for any person to perform any service for a sexually oriented business or service oriented escort bureau while the license required for such service or such business is under suspension.

(E) *Prohibited businesses.* The following shall be unlawful within the county:

(1) Sexually oriented arcade;

(2) Sexually oriented encounter center;

(3) Sexually oriented motel;

(4) Sexually oriented massage parlor or any business offering massages that is operated by a person who is not licensed as a massage therapist in accordance with the provisions of KRS 309.350 *et seq.*;

(5) Sexually oriented modeling;

(6) Sexually oriented nude modeling studio;

(7) Public exhibition of specified anatomical areas;

(8) Sexually oriented escort bureau and sexually oriented escorts operating in any location or format; and

(9) Any land-use that involves intentional or regular presentation of acts or material that is obscene under Kentucky law or the community standards of this county.
(Ord. O-17-06, passed 1-3-07)

(5) The annual license fee for a manager of a service oriented escort bureau shall be \$155; and

§ 117.05 TYPES OF LICENSES AND LICENSE FEES.

The County Fiscal Court hereby creates the following types of business privilege and related licenses:

(A) *Types of licenses.*

(1) License for a sexually oriented business.

(2) License for a manager of a sexually oriented business.

(3) License for an entertainer at a sexually oriented business.

(4) License for a service oriented escort bureau.

(5) License for a manager of a service oriented escort bureau.

(6) License for a service oriented escort.

(B) *License fees.* License applications and license renewals under this chapter shall be accompanied by the following fees, which shall be nonrefundable except sexually oriented businesses under division (1):

(1) The annual license fee for a sexually oriented business shall be \$3,000. Upon denial of a business application, the business shall receive a refund of \$1,500;

(2) The annual license fee for a manager of a sexually oriented business shall be \$155;

(3) The annual license fee for an entertainer at a sexually oriented business shall be \$155;

(4) The annual license fee for a service oriented escort bureau shall be \$3,000;

(6) The annual license fee for a service oriented escort shall be \$155.

(C) *Establishment license.* Upon approval of an establishment license for a sexually oriented business or service oriented escort bureau, the License Inspector shall issue to the licensee a license.

(D) *License identification card.* Upon approval of a license for a manager, entertainer, or escort, the License Inspector shall issue to the licensee a license identification card. The identification card shall contain the manager's, entertainer's or escort's picture, name, age, hair color, eye color, and weight.

(E) *Transfers, name change, and replacement license.*

(1) An application for a transfer of a license shall be considered as an initial application. No license, therefore, shall be transferred from one person to another, or from one location to another, until the applicant complies with all provisions of this chapter. No transfer shall be made or application for transfer acted upon after either the applicant or the license holder has been charged with a violation of

any provision of this chapter until the time as the charge shall have been finally disposed of. When authorized, the county shall issue all transfers or name changes.

(2) The fee for a change of name for any licensed premise or person provided for herein upon proper proof of such legal name change shall be \$25.

(3) Whenever a license shall have been lost or destroyed, without fault or negligence on the part of the holder thereof, a duplicate may be issued therefore by the License Inspector, upon proper proof of the loss or destruction, upon payment of a fee of \$10.

(Ord. O-17-06, passed 1-3-07)

§ 117.06 APPLICATION FOR ESTABLISHMENT LICENSE.

(A) *Required application.* An application for an establishment license for a sexually oriented business or service oriented escort bureau shall be submitted on a form supplied by the License Inspector and shall include the following:

- (1) The name, residence address, home telephone number, date and place of birth, and social security number of the owner(s); and (c) Dressing rooms for entertainers;
- (2) The business name, address, and telephone number of the establishment;
- (3) Addresses of the owner(s) for the five years immediately prior to the date of application;
- (4) A description of the business history of the owner(s) in any business regulated by this chapter; and whether any such owner(s), previously operating in this or another county or state, has had a business license revoked or suspended, the reason therefor, and the activity or occupation subjected to such action, suspension, or revocation;
- (5) A description of the business, occupation, or employment of the owner(s) for the three years immediately preceding the date of application;
- (6) If the owner(s) is a corporation, a current certificate of good standing issued by the appropriate officer of the Commonwealth of Kentucky;
- (7) The designation of an agent for service for the owner(s), including address and phone numbers, where the agent can regularly be found in Campbell County, Kentucky, during normal business hours, and a notarized consent from such agent agreeing to act as such;
- (8) A floor plan of the premises that clearly shows all entrances, exhibits, stairways, and all rooms in the building and their intended uses;
- (9) For a sexually oriented cabaret, the floor plan must also show:
- (a) The size of the room in which the entertainment will be presented, the manager's station, and any obstructions to the sightline from the manager's station over the rest of the room;
- (b) The size and elevation of the stage on which performances will be offered, and the vertical height of the stage and design and placement of barriers to enforce horizontal separation between the performers and the audience;

(d) Schematic lighting plans for the room in which entertainment will be provided.

(10) All required fees.

(B) *Additional information for application for service oriented escort bureau license.* In addition to the foregoing information, the application for a license to operate a service oriented escort bureau shall provide the following information:

(1) A complete description of the exact nature of the business to be conducted, including office staff, advertising theme and method, employee qualifications, and copies of contracts to be used with escorts and patrons;

(2) The hours that the escort bureau will be open to the public (said hours shall include all hours any escorts may be with a patron);

(3) The methods of promoting the health and safety of escorts and protecting them from assault, battery, and rape;

(4) The methods of supervision of employees to prevent the escort from charging the

patron any fee that is in addition to the fee paid to the escort bureau by the patron;

(5) The methods of supervision which will prevent the escorts from soliciting acts of prostitution or offering to provide sexual stimulation or sexual gratification;

(6) The name and address of the certified public accountant who will certify the gross receipts upon application of a renewal license;

(7) A statement disclosing the names of all persons who have invested in the proposed service oriented escort bureau and who will share in or receive a percentage of the profit or returns from the proposed escort bureau; and

(8) The method of compensating service oriented escorts.

(C) *Incomplete application.* Failure to provide information required by this section shall constitute an incomplete application and the application shall not be processed.

(Ord. O-17-06, passed 1-3-07)

§ 117.07 APPLICATION FOR MANAGER, ENTERTAINER, OR ESCORT LICENSE.

(A) *Required application.* An application for a license for an entertainer, escort, or a manager shall be submitted on a form supplied by the License Inspector and shall include the following:

(1) The name, residence address, home telephone number, date and place of birth, and social security number of the applicant;

(2) Addresses of the applicant for the five years immediately prior to the date of application;

(3) A description of the business or employment history of the applicant; and whether the applicant, in previously operating in this or another county or state, has had a license under this chapter, or if in another jurisdiction, similar to those required under this chapter, revoked or suspended, the reason therefore, and the activity or occupation subjected to such action, suspension, or revocation; and

(4) All required fees.

(B) *Incomplete application.* Failure to provide information required by this section shall constitute an incomplete application and the application shall not be processed.

(Ord. O-17-06, passed 1-3-07)

§ 117.08 CRITERIA FOR ISSUANCE OF LICENSE.

(A) *General criteria.* The License Inspector shall issue a license authorized by this chapter in accordance with the procedure set out in the following section if and only if the License Inspector finds all of the following to be true:

(1) For an establishment license, the owner(s) is 21 years of age or older;

(2) For an individual license, the applicant is 21 years of age or older;

(3) The applicant, and for an establishment license, the owner(s) are current in all taxes, fees, and other amounts on any account, for any purpose, that is due to the county or the city in which they intend to perform or work;

(4) The owner(s) [including any spouse of individual owners], manager(s), entertainer(s), or escort(s) have not been convicted of a violation of this chapter (or provisions of a similar ordinance or law in another jurisdiction) within the two years immediately preceding the date of application;

(5) The owner(s) [including any spouse of individual owners], manager(s), entertainer(s), or escort(s) have not had a license issued under this chapter (or provisions of a similar ordinance or law in another jurisdiction) revoked within the two years immediately preceding the date of application;

(6) The owner(s) [including any spouse of individual owners], manager(s), entertainer(s), or escort(s) are not currently the subject of the suspension of any type of license issued under this chapter (or under a similar ordinance or law in another jurisdiction);

(7) The owner(s) (including any spouse of individual owners), manager(s), entertainer(s), or escort(s) are not under confinement for and have not, within the previous five years, been convicted of any felony or misdemeanor involving sexual offenses, rape, statutory rape, or related offenses against a person (as defined in Chapter 510 of the Kentucky Penal Code); or similar statutes in other states; or federal laws addressing similar or related offenses; or federal or state laws in any states addressing controlled substance or illegal drugs or narcotics offenses;

(8) The application is complete, truthful, and accurate;

(9) The application is accompanied by the required fee; and

(10) The owner(s), manager(s), entertainer(s), or escort(s) meet any other applicable criteria under this section.

(B) *Specific criteria applicable to all establishment licenses.* The License Inspector shall issue a business privilege license for an establishment that is subject to this chapter in accordance with the procedure set out in the following section if and only if the License Inspector finds all of the following to be true:

(1) The owner meets the criteria set forth in division (A) of this section;

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(2) The establishment constitutes a permitted use or lawful nonconforming use of the premises, in accordance with the zoning district of the jurisdiction in which it is located and the applicable provisions of the zoning authority for the location;

(3) The proposed premises have adequate off-street parking, as required under the applicable zoning ordinance, for a similar use, whether sexually oriented or not, unless the lack of such off-street parking is a lawful nonconforming situation under the applicable zoning ordinance;

(4) The proposed premises comply with the separation requirements set out in applicable zoning districts;

(5) No department or official of the county or the city in which the business is located has notified the License Inspector of any violations of health, fire, or other county or city codes on the premises where the establishment will operate;

(6) The applicant provides evidence that the owner(s) owns the premises or has a lease giving it control of the premises through the proposed licensing period;

(7) The premises of a sexually oriented entertainment business has: a stage elevated at least 24 inches above the surrounding floor area, with a minimum area of 100 square feet, and with a horizontal separation of at least 60 inches between the edge of the performance area and the nearest space to which customers shall have access; the horizontal separation shall be physically enforced by a partial wall, rail, or other physical barrier, which may be located either on the stage (to keep the entertainers back from the edge) or on the floor (to keep the customers back from the stage);

(a) The described stage located in an unobstructed room of at least 600 square feet,

(b) Dressing rooms for entertainers;
and

(c) At any time the establishment is open to the public, lighting of at least 20 lumens thirty-six inches from the floor and above, throughout the portions of the sexually oriented business that are accessible to the public;

(8) The owner(s) has provided the License Inspector with a designated agent for service who can be found in Campbell County during normal business hours; and

(9) No sexually oriented business may be located at a premises with the same entrance, same address, or shared access with another sexually oriented business or with a service-oriented escort bureau licensed under this chapter; no service-oriented escort bureau may be located at a premises with the same entrance, same address, or shared access with a sexually oriented business licensed under this chapter.

(C) *Burden of proof.* The applicant shall have the burden of proof on each of these issues, except that the applicant's burden regarding issues related to criminal background shall be limited to completing forms provided by the License Inspector on each such person, providing adequate information to allow background checks by law enforcement officials. The applicant's burden shall include providing access for timely inspections by building, health, fire, or other public officials, with reasonable notice, during normal business hours, while the license application is pending; the applicant shall not have the obligation to ensure that such inspections are actually completed.
(Ord. O-17-06, passed 1-3-07)

§ 117.09 APPROVAL OR DENIAL OF LICENSE.

Procedures.

(A) *Determination of completeness.* Within five business days of receiving a license application under this chapter, the License Inspector shall determine whether said application is complete, in accordance with the requirements of §§ 117.06 or 117.07 above, as applicable. If the application is not complete, the License Inspector shall list the items that are missing, and shall promptly notify the applicant of the items that are missing, using United States first class mail.

(B) *Approval or denial.* Within 30 calendar days after receipt of a complete license application under this chapter, the License Inspector shall approve or deny said application. The License Inspector shall provide specific findings for such decision and shall send such findings by United States first class mail, within five business days after the decision, to the

applicant(s). If a request for a hearing is made, as noted in the division (3) following, the 30 day time

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limit for action on the license application shall not apply.

(Ord. O-17-06, passed 1-3-07)

(C) *Request for hearing.* The License Inspector may require a hearing on any application and shall notify the applicant of same, in writing, within two business days of his or her determination of the need for a hearing. The applicant likewise may request a hearing on an application at any time during the application review period; such request by the applicant shall be made in writing and delivered to the License Inspector by certified mail or other means providing evidence of receipt. If a license application is denied without a hearing, the applicant may request a reconsideration with a hearing in accordance with § 117.11.

(D) *Hearing.* If a hearing is to be held in accordance with the previous division (C), the License Inspector shall set a date for a hearing, which shall occur no later than 15 calendar days after the determination that an application is complete, or, in the case of a request for a hearing after a denial, within 20 calendar days after the receipt of the request for hearing; the License Inspector shall give at least ten calendar days' notice of the time and place of the hearing to the applicant(s) and to all persons entering a written appearance on behalf of the applicant.

(E) *Action without a hearing.* If no party requests a hearing, the License Inspector may either act on a complete application without a hearing or schedule the matter for a hearing. If the License Inspector elects to act without a hearing, such action shall occur within 30 calendar days of the filing of the complete application.

(F) *Decision after hearing.*

(1) The License Inspector shall issue a decision, with findings, within five business days after any hearing held in accordance with this section.

(2) The License Inspector shall mail a copy of such decision to the applicant and to any person entering a written appearance on behalf of the applicant or any other party.

(G) *Time limit.* The License Inspector shall, in any case, issue an initial decision no later than 60 calendar days after the filing of a complete application.

§ 117.10 ISSUANCE OF TEMPORARY LICENSE.

Issuance of a temporary license awaiting license approval.

(A) Upon the filing of a complete application for a new license or renewal of an existing license issued under the provisions of this chapter for a business that was in operation prior to the adoption of this chapter, the License Inspector shall issue a temporary license to the applicant, which temporary license shall remain in effect until the License Inspector has approved or disapproved the license. The status quo of the applicant will be maintained pending a decision by the License Inspector and the provisions of this chapter will not be enforced against a temporary license holder awaiting license approval.

(B) If an existing business's new license application or license renewal is denied under this chapter, the temporary license shall remain in effect until the final disposition of proceedings, including judicial review.

(C) If a license application for a business, not existing on the effective date of this chapter, is denied, and if the applicant files a timely appeal with

the License Administrator or in the court system, then, upon the written request of the applicant, the License Administrator shall issue a temporary license for such business, which shall remain in effect pending resolution of the appeal. The temporary license shall be issued within five business days of receipt of the written request for such license. The temporary license shall be clearly labeled "temporary." It is not the intent of the county to encourage long-term reliance on such temporary license or to establish the basis of a vested rights claim.

(D) Any applicant issued a temporary license under the provisions of division (C) above shall comply with the provisions of this chapter. Additionally, an applicant issued a temporary license under the provisions of division (C) above shall be subject to the penalty provisions provided in this chapter, including suspension or revocation of the temporary license.
(Ord. O-17-06, passed 1-3-07)

§ 117.11 REMEDIES UPON DENIAL OF LICENSE.

(A) *Request for hearing.*

(1) An applicant may request a hearing for a reconsideration of the decision to deny a license.

chapter may seek judicial review in a manner provided by law.

(Ord. O-17-06, passed 1-3-07)

(2) The hearing shall be heard pursuant to paragraph (E) of this section. Such request shall be filed in writing with the License Inspector within ten calendar days of receipt of the notice of decision from the License Inspector.

(B) *Notice of hearing date.* Upon receipt of a request for a hearing and reconsideration, the License Inspector shall set a date for a hearing on the license denial no later than 15 calendar days after the request for such hearing has been received by the License Inspector. The License Inspector shall give notice of the time and place of the hearing to the applicant(s) and to all persons required to appear in the matter. With the consent of the applicant, the hearing may be set for a later date for the convenience of all parties.

(C) *Hearing not mandatory.* A request for hearing and reconsideration is not mandatory; the applicant may seek judicial review without requesting a hearing and reconsideration.

(D) *Hearing Officer and hearing procedure.* The Fiscal Court shall appoint a Hearing Officer for the purpose of taking evidence upon an application for reconsideration of the decision by the License Inspector. The hearing shall be conducted pursuant to KRS 13B.080-090(1)(6), KRS 13B.100, KRS 13B.130, which shall be incorporated by reference herein. The decision of the Hearing Officer shall be final and subject to judicial review.

(E) *Decision.* The Hearing Officer shall issue a decision, with findings, within ten calendar days after any hearing held in accordance with this section. The Hearing Officer shall mail a copy of such decision by United States first class mail to the applicant and to any other person entering a written appearance on behalf of any party. Unless the applicant has consented in writing to a delay of the hearing, the hearing shall be held and a decision rendered by the Hearing Officer within 30 calendar days of receipt of the License Inspector of the notice requesting the hearing.

(F) *Judicial review.* Any applicant or any other person aggrieved by the decision of the License Inspector or Hearing Officer to approve or deny a license application under the provisions of this

§ 117.12 LICENSE PERIOD AND RENEWALS.

(A) *License period.* A license required under this chapter shall be issued for a one-year period expiring on the last day of the calendar month during which the license was issued or renewed during the previous year.

(B) *Renewal of license.*

(1) *Application.* A license issued under this chapter may be renewed by making application to the License Inspector on application forms provided for that purpose. Licenses shall expire on the last day of the calendar month during which the license was issued or renewed during the previous year. Renewal applications for such licenses shall be submitted no earlier than 30 days prior to the expiration of the license.

(2) *Issuance.* Upon timely application thereof, a license issued under the provisions of this chapter shall be renewed by issuance of a new license in the manner provided by § 117.09 unless the License Inspector disapproves such renewal application in accordance with § 117.09.

(3) *Late filing.* If the application for

renewal of a license is not made before the expiration date of the license provided in division (A) of this section, a new application shall be required.

(Ord. O-17-06, passed 1-3-07)

§ 117.13 POSTING OR FILING OF LICENSES ON PREMISES.

(A) *Establishment licenses.* Any sexually oriented business or service oriented escort bureau shall post the required establishment license conspicuously, easily viewable, at eye level in a portion of the business that is frequented by its customers and that is well lighted.

(B) *Manager's license.* Any sexually oriented business or service oriented escort bureau shall require that each manager post her or his license conspicuously, easily viewable, at eye level next to the establishment license while such manager is on duty and acting as manager. Alternatively, such business may post the licenses of all managers employed by the business at eye level and use a changeable plaque or card to identify by name the manager on duty at any given time.

(C) *Licenses for sexually oriented entertainers.* Licenses for sexually oriented entertainers shall be maintained on the premises where the entertainment is provided and shall be available for inspection by law enforcement officers upon request to the manager on duty at any time when the business is open to the public.

sexually oriented business or service oriented escort bureau to:

(D) *Licenses for service oriented escorts.* Licenses for escorts shall be maintained at the required open office of the service oriented escort bureau for which such escorts work or contract.

(E) *Effect of failure to post and have available licenses.*

(1) It shall be prima facie evidence that any business licensed under this chapter that fails to have the required license posted, in the manner required by this chapter, has not obtained such license.

(2) It shall be prima facie evidence that any manager, entertainer, or escort at any business licensed under this chapter working in an establishment in which a license is not posted in the manner required by this chapter has knowledge that such business was not licensed.

(3) It shall be prima facie evidence that any manager or enterprise licensed under this chapter has knowledge that any manager, entertainer, or escort whose license is not posted or maintained on file at the business, as required by this chapter, has no such license.

(Ord. O-17-06, passed 1-3-07)

§ 117.14 AFFIRMATIVE DUTIES OF SEXUALLY ORIENTED BUSINESS, SERVICE ORIENTED ESCORT BUREAUS AND MANAGERS.

(A) *Affirmative duties of sexually oriented business, service oriented escort bureaus and managers.* It is and shall be the affirmative duty of each license holder of a sexually oriented business or service oriented escort bureau and the managers of these businesses to comply with the affirmative duties listed below. Failure to comply with these affirmative duties shall result in an assessment of points, license suspension, or license revocation. Penalties for violation of these duties are listed following each respective affirmative duty. It shall be the affirmative duty of each license holder of a

(1) Ensure that the sexually oriented business, service oriented escort bureau, or manager licensee does not accumulate more than 24 points within the previous 24 months. Penalty for violation: license revocation.

(2) Ensure that the sexually oriented business, service oriented escort bureau, or manager licensee does not have a license suspended two times during the previous 12 months. Penalty for violation: license revocation.

(3) Ensure that all material representation on the license application is true. Penalty for violation: license revocation.

(4) Ensure that the sexually oriented business or service oriented escort bureau licensee, or the licensee's spouse, or any officer, director, or greater than 10% shareholder or member does not have another license revoked under this chapter. Penalty for violation: license revocation.

(5) Ensure that the sexually oriented business or service oriented escort bureau licensee, or any spouse, partner, officer, director, or shareholder or member with greater than a 10%

interest in licensee, or licensed manager, is not convicted of any felony or misdemeanor involving prostitution or solicitation for prostitution, activities involving specified sexual activity, other sexual offenses, rape, statutory rape, or related offenses against a person (as defined in Chapter 510 of the Kentucky Penal Code), or similar statutes in other states; or federal laws addressing similar or related offenses; or federal or state law. Penalty for violation: license revocation.

(6) Ensure that the sexually oriented business, service oriented escort bureau, or manager licensee, is not convicted of or has pled guilty or no contest to charges related sale of controlled substances or illegal drugs. Penalty for violation: license revocation.

(7) Ensure that no specified sexual activity takes place on the premises, whether in or out of public view. Penalty for violation: license revocation.

(8) Ensure that no prostitution or solicitation for prostitution takes place on the premises, whether in or out of public view. Penalty for violation: license revocation.

(9) Ensure that there is no sale of controlled substances or illegal drugs on the premises. Penalty for violation: license revocation. located either

(10) Ensure that entertainers maintain a minimum distance of five feet from areas on the establishment's premises being occupied by customers, for a minimum of one hour after the entertainer appears semi-nude on the establishment's premises.

(a) This regulation is not intended to prohibit ingress or egress from the premises or entertainers use of the premises' common restroom. It is intended to control illicit sexual contact and reduce the incidents of prostitution occurring in the establishments.

(b) Regulating a reasonable delay between the times the entertainers appear semi-nude and their commingling with customers is a narrowly tailored furtherance of this interest. Penalty for violation: license suspension after being cited for two such violations.

(11) Ensure that the sexually oriented business, service oriented escort bureau, or manager licensee does not accumulate more than 12 points within the previous six months. Penalty for violation: license suspension.

(12) Ensure that the sexually oriented business, service oriented escort bureau, or manager licensee does not accumulate more than 18 points within the previous 12 months. Penalty for violation: license suspension.

(13) Ensure that dancing in such establishment shall take place only in a location and manner meeting all of the conditions listed below. Penalty for violation: assessment of three points.

(a) In a theater or open room of at least 600 square feet; and

(b) On a stage, elevated at least 24 inches above the level on which patrons sit or stand; and

(c) On a stage with a horizontal separation of at least 60 inches between the edge of the stage or platform and the nearest space to which customers shall have access-the horizontal separation shall be physically enforced by a partial wall, rail, or other physical barrier, which may be

on the stage (to keep the entertainers back from the edge) or on the floor (to keep the patrons back from the stage). The License Inspector may, after a hearing as provided for above, modify this requirement for licensed establishments existing at the time of the adoption of this chapter if he or she determines that strict compliance to the distance requirements might cause an undue hardship or impracticable compliance.

(14) Ensure that no sexually oriented motion picture or video, shown for a fee (whether collected per feature, per unit of time, or as a general admission charge to a facility), takes place in any space of less than 1,000 square feet. This section does not apply to the showing of informational videos by professionals licensed by the Commonwealth of Kentucky to clients who pay a fee for service, where the showing of such videos is incidental to a professional service and not the subject of separate consideration from the customer. Penalty for violation: assessment of three points.

(15) Ensure that no gambling takes place on the premises. Penalty for violation: assessment of three points.

(16) Ensure that no person shall display or

expose specified anatomical areas. Penalty for violation: assessment of three points.

(17) Ensure that only employees, agents, servants, or independent contractors of the licensee occupies the stage. Penalty for violation: assessment of three points.

(18) Ensure that tips for sexually oriented entertainers are collected in containers accessible to patrons and not located on the stage. The licensed business may, but is not required to, create separate tip containers for different performers or to establish other means to divide or separate the tips among performers. Penalty for violation: assessment of three points.

(19) Ensure that the sexually oriented business or service oriented escort bureau is licensed under this chapter. Penalty for violation: assessment of three points.

(20) Ensure that the sexually oriented business is closed between 2:30 a.m. and 12:00 p.m. each day, or at such earlier time as may be required under a local option ordinance conforming with the law of the Commonwealth. Penalty for violation: assessment of two points.

(21) Have a licensed manager on duty at the premises at all times when the establishment is open to the public. A manager's responsibility under this item is to ensure that, if such manager leaves the establishment and the establishment remains open, another manager is on the premises and has accepted management responsibility for it. Penalty for violation: assessment of two points.

be of appropriate age or older to enter. Penalty for violation: assessment of one point.

(22) Allow law enforcement officers, code enforcement officers, health officers, or other representatives of the county, city, or other public agencies full access to the public portions of the premises at any time during business hours for purposes of inspection to ensure compliance with this and other applicable laws. Penalty for violation: assessment of two points.

(23) Prevent persons under 21 years of age from entering the premises or the portion or portions thereof of a sexually oriented business that sells alcohol or that offers entertainment. Penalty for violation: assessment of two points.

(24) Prevent persons under 18 years of age from entering the premises or the portion or portions thereof of a sexually oriented business that does not sell alcohol and that does not have entertainment. Penalty for violation: assessment of two points.

(25) Prevent publicly displaying explicit sexual material except in conformity with division (14) above. Penalty for violation: assessment of two points.

(26) Ensure that a clear view is maintained from the manager's station over the entire areas open to the public. Penalty for violation: assessment of two points.

(27) Ensure that any person providing services at the establishment holds a valid license issued under this chapter. Penalty for violation: assessment of two points.

(28) Ensure that all lighting required by this chapter actually operates, with at least 90% of all bulbs in working order, turned on, during all hours when the establishment is open for business. Penalty for violation: assessment of one point.

(29) Ensure signage is posted in conspicuous locations indicating that persons must

(30) Ensure that an entertainer's valid license is on the premises in the manager's office at all times the entertainer or escort is in the licensed establishment. Penalty for violation: assessment of one point.

(31) Ensure that an escort's valid license is in the open office maintained by the escort bureau at all times the escort is with a customer. Penalty for violation: assessment of one point.

(32) Post and enforce a "no loitering" policy on the premises, including parking areas and other exterior parts of the premises that applies to employees, entertainers, and the public. Penalty for violation: assessment of one point.

(33) Ensure all doors to the licensed premise are kept closed, except for the limited time necessary to allow for ingress and egress during business hours. Penalty for violation: assessment of one point.

(34) Prevent any person from being semi-nude while in or on their establishment's premises open to customer view unless the person who is appearing semi-nude is a duly licensed employee of

that establishment who, while semi-nude, is on a stage that meets the requirements of this chapter. This subsection is not applicable to dressing rooms or other areas that are not generally accessible or open to customer(s) view. Penalty for violation: license suspension after being cited for two such violations.

(B) *Affirmative duties of sexually oriented entertainer or service oriented escort.* It is and shall be the affirmative duty of each sexually oriented entertainer or service oriented escort holding a license under this chapter to comply with the listed affirmative duties. Failure to comply with these affirmative duties shall result in an assessment of points, license suspension or license revocation. Penalties for violation of these duties are listed following each respective affirmative duty. It shall be the affirmative duty of each license holder who is a sexually oriented entertainer or service oriented escort to:

(1) Ensure that the sexually oriented entertainer or service oriented escort does not accumulate more than 18 points within the previous 24 months. Penalty for violation: license revocation.

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(2) Ensure that the sexually oriented entertainer or service oriented escort does not have a license suspended two times during the previous 12 months. Penalty for violation: license revocation.

(3) Ensure that all material representation on the license application is true. Penalty for violation: license revocation.

(4) Ensure that the sexually oriented entertainer or service oriented escort does not have another license revoked under this chapter. Penalty for violation: license revocation.

(5) Ensure that the sexually oriented entertainer or service oriented escort is not convicted of any felony or misdemeanor involving prostitution or solicitation for prostitution, activities involving specified sexual activity, other sexual offenses, rape, statutory rape or related offenses against a person (as defined in Chapter 510 of the Kentucky Penal Code), or similar statutes in other states; or federal laws addressing similar or related offenses; or federal or state law. Penalty for violation: license revocation.

(6) Ensure that the sexually oriented entertainer or service oriented escort is not convicted of or pled guilty or no contest to charges related sale of controlled substances or illegal drugs. Penalty for violation: license revocation.

(7) Ensure that no prostitution or solicitation for prostitution takes place on the premises, whether in or out of public view. Penalty for violation: license revocation.

(8) Maintain a minimum distance of five feet from areas on the establishment's premises being occupied by customers, for a minimum of one hour after the entertainer appears semi-nude on the establishment's premises. This regulation is not intended to prohibit ingress or egress from the premises or entertainers use of the common restroom. It is intended to control illicit sexual contact and reduce the incidents of prostitution occurring in the establishments. Regulating a reasonable delay between the times entertainers appear semi-nude and their commingling with customers is a narrowly tailored furtherance of this interest. Penalty for violation: license suspension.

(9) Ensure that the sexually oriented entertainer or service oriented escort does not

accumulate more than 12 points within the previous 12 months. Penalty for violation: license suspension.

(10) Avoid involvement in any gambling on the premises. Penalty for violation: assessment of three points.

(11) Avoid display or exposure of specified anatomical areas. Penalty for violation: assessment of three points.

(12) Dancing in "establishments" shall take place only on a stage that meets the regulatory requirements of this chapter. Penalty for violation: assessment of three points.

(13) Refuse tips offered directly to her or him or proffered in any way other than through the tip containers as specified in this section, if the license holder is a sexually oriented entertainer. Penalty for violation: assessment of three points.

(14) Cooperate with owners and managers to ensure that no one other than employees, agents, servants, or independent contractors of the licensee occupies the stage, if the license holder is a sexually oriented entertainer. Penalty for violation: assessment of two points.

(15) Avoid entering any sexually oriented cabaret or other sexually oriented business while in the company of a customer, if the license holder is a service oriented escort. Penalty for violation: assessment of two points.

(16) Perform any duties as an entertainer or escort only while holding a valid entertainer's or escort's license issued under this chapter. Penalty for violation: assessment of two points.

(17) Confirm that his or her entertainer's or escort license is on the premises in the manager's office at all times that the entertainer or escort is actively working for the establishment. Penalty for violation: assessment of one point.

(18) Report to management other violations or apparent violations of this chapter. Penalty for violation: assessment of one point.

(19) Entertainers must avoid being semi-nude while in or on establishment premises open to customer view unless the entertainer is on a stage

that meets the requirements of this chapter.

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(C) This division is not applicable to dressing rooms or other areas that are not generally accessible or open to customer(s) view. Penalty for violation: license suspension.
(Ord. O-17-06, passed 1-3-07)

and patrons or prospective patrons and staffed by a

§ 117.15 ADDITIONAL AFFIRMATIVE DUTIES AND VIOLATIONS FOR SERVICE ORIENTED ESCORT BUREAUS.

In addition to the affirmative duties and penalties for violation of § 117.14 above, the following affirmative duties, operational criteria and penalties shall apply to the operation of all service oriented escort bureaus:

(A) *Contracts required.*

(1) Contents of contract. The service oriented escort bureau shall provide to each patron a written contract and receipt of payment for service. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount of money such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract shall also include a statement in clear and concise language that prostitution and solicitation for prostitution are illegal in the Commonwealth of Kentucky and are punishable by both fine and imprisonment and that no act of prostitution shall be performed in relation to the services contracted for. Further, the contracts provided for in this division shall be numbered and utilized in numerical sequence by the service oriented escort bureau.

(2) Signing and copies. The contract shall be signed by the patron and a copy furnished to him or her. The service oriented escort bureau shall also retain a copy of each contract and shall furnish said copies to the License Inspector upon his written request therefore.

(B) *Open office required.* The escort bureau shall maintain an "open office" at the licensed location during all hours escorts are working. The address of that office shall be included in all patron contracts and published advertisements. To qualify as an "open office" under this chapter, a facility must meet all of the following requirements:

(1) The office must be open to the public

licensed owner or service oriented escort manager from 12:00 p.m. to 12:00 a.m.;

(2) All telephone lines and numbers listed to the service oriented escort bureau, or advertised as service oriented escort bureau numbers, must terminate at the open office and at no other location, such as to cell phones or mobile phones or to other locations by a call forwarding process;

(3) An index of all employees and copies of all escort licenses must be kept in the open office;

(4) All business records required under this chapter shall be kept in the open office. "Records of gross sales," which are required to be kept, include records of escort calls and referrals, stating the name and address, including hotel or motel room, of the patron, the date and time of referral, the name of escort sent and whether or not the referral resulted in an escort contract and the total fee received from the patron, if any; and

(5) All office space of the service oriented escort bureau must be fully open to the public with no private rooms or booths where the patron may meet with the escort.

(C) *Availability of escorts onsite.* A service oriented escort shall only be available onsite at the licensed service oriented escort bureau 30 minutes or less prior to the appointment time and shall stay at the escort bureau no more than 15 minutes after returning from the appointment.

(D) *Continuous operation.* The service oriented escort bureau shall commence business from an open office within 30 days after issuance of the license. In the event a service oriented escort bureau licensee shall not commence business in an open office within 30 days after issuance of a license, or shall discontinue business or close the open office for a period of 30 days without specific approval of the License Inspector, such license shall terminate and be revoked automatically, without action by the License Inspector.

(E) *Acts of employees.* The service oriented escort bureau, in terms of licensing consequences, is responsible and liable for the acts of all its employees and subcontractors, including but not limited to telephone receptionists and escorts who are referred by that bureau while such escorts are with a patron.

(F) *Referral of escorts for licensing.* Every service oriented escort bureau shall refer all of its service oriented escorts to the License Inspector for application for an individual permit, as required in this chapter, before hiring or contracting with the escorts. Upon termination of employment of any service oriented escort with such service oriented escort bureau, such service oriented escort bureau shall notify the License Inspector, in writing, of such termination within five business days thereof.

(G) *Age of employees.* No escort bureau shall employ a person as an escort who is under the age of 21 years of age.

(H) *Identification cards.* It shall be the additional affirmative duty of any owner and manager of a service oriented escort bureau to ensure that every service oriented escort shall have in their possession at all times their service oriented escort license in accordance with § 117.05(D) of this chapter.

(I) *Penalties.* For violation of any of the above requirements, the service oriented escort bureau and/or the service oriented escort shall be assessed two points for each violation.
(Ord. O-17-06, passed 1-3-07)

§ 117.16 NOTIFICATION AND ENFORCEMENT OF POINT ASSESSMENT.

(A) *Notification of points assessment.* The License Inspector shall notify the licensee, by United States first class mail, that points have been assessed against the license holder by the License Inspector within ten calendar days of said points assessment.

(B) *Reduction in points for self-reporting.* Point totals for actions constituting crimes or misdemeanors under state law or applicable county or city ordinances shall be reduced by half for any instance in which the License Inspector finds that the licensee or an employee of the licensee reported the violation to the Campbell County Police Department or local police department before the arrival of the first police car at the site, regardless of whether such report is the first report of this instance to the police.

(C) *Increase in points for involvement in criminal activity.* Point totals for actions constituting crimes or misdemeanors under state law or

applicable county or city ordinance shall be doubled for any instance in which the License Inspector finds that the sexually

oriented business licensee or service oriented escort bureau was directly involved in such violation or that an employee was directly involved and that said licensee reasonably should have known of such involvement.

(D) *Appeal of points assessment.* Any person receiving notice that points have been assessed against it, him, or her may appeal such assessment to the Hearing Officer by giving written notice of such appeal, and the grounds for such appeal, to the License Inspector within 20 days of the date of receipt of the notice of point assessment.

(E) *Hearing on point assessment.*

(1) Upon receipt of any such appeal, the Hearing Officer shall schedule a hearing on such appeal, which hearing shall occur within ten days of the date of filing the appeal, and shall give notice of the time, date and place of such hearing to:

(a) The appellant;

(b) The person who wrote the citation or other document resulting in the assessment of points;

(c) The head of the agency to which the person who wrote such citation or other document reports;

(d) The Campbell County Police Chief; and

(e) The Campbell County Attorney.

(2) Any of these parties may participate in the hearing and may be represented by counsel. Each party shall have the right to examine or cross-examine any witness. Where necessary to complete the hearing, the License Inspector may continue the hearing to a time certain occurring within ten days of the original date of the hearing.

(F) *Scope of hearing, burden of proof.* The scope of the hearing shall address three issues:

(1) Whether the incidents, omissions or other actions or inactions that led to the assessment of points occurred;

(2) Whether the points were assessed in accordance with this chapter; and

(3) Whether there are mitigating circumstances that should reduce or eliminate the assessment of points. The Licensing Inspector shall have the burden of proof on the first two items. The appellant shall have the burden of proof on the third item. The standard of proof shall be a preponderance of the evidence. Mitigating circumstances that should reduce or eliminate the assessment of points shall be:

(a) Self-reporting by the licensee, with points reduced as provided in this chapter;

(b) Cooperation of the licensee in investigating the actions or inactions; and

(c) Where an establishment licensee is assessed points for actions of entertainers or other employees, proof by the licensee that it took diligent and reasonable measures to prevent the actions resulting in the assessment of points or that the particular action was entirely unprecedented in the establishment and that the licensee took prompt corrective action and has now established procedures to avoid such actions in the future.

(4) The hearing shall be conducted pursuant to KRS 13B.080-090(1)-(6), KRS 13B.100, KRS 13B.130.

(G) *Decision on point assessment.* Within ten days after the conclusion of such hearing, the Hearing Officer shall issue in writing a memorandum setting forth Findings of Fact and Application of Law. The Hearing Officer shall mail copies of the memorandum, by United States first class mail, to each person actually participating in the hearing, as well as any attorney representing any such party. The burden of proof in the proceeding shall be by a preponderance of the evidence. The initial burden of proof shall be on the agency to whom the person writing the citation or other document assessing the points reports.

(H) *Further appeal.* Any license holder aggrieved by the decision of either the License Inspector or the Hearing Officer to assess points under the provisions of this section may seek judicial review in a manner provided by law. (Ord. O-17-06, passed 1-3-07)

(A) *Action required.* When the License Inspector has information that there has been a

violation of any provision of this chapter by a licensee or at a licensed premises, or any of the conditions required for the issuance of a license have changed, or that anything on the application for the license may have been untrue or incomplete, then the Hearing Officer shall hold a hearing in accordance with the provisions of this section.

(B) *Hearing procedure.* Where a hearing is required under this section, the Hearing Officer shall set the date for the hearing after no less than ten calendar days and no more than 30 calendar days after the License Inspector receives verified or otherwise credible information that a violation may have occurred. The Hearing Officer shall send written notice to the owner(s), licensee, or any persons filing a complaint with the License Inspector. The hearing shall be to make findings of fact in the matter and shall be recorded, transcribed, and conducted pursuant to KRS 13B.080-090(1)-(6), KRS 13B.100, KRS 13B.130.

(1) Notice of such hearing shall be in writing, and shall set forth the reason for the hearing or the complaint against the licensee, and shall be served upon the licensee in person or by registered or certified mail to the licensee's last known address. If the Hearing Officer is not able to serve notice upon

the licensee in person, and any notice sent by mail is returned by the postal service, the County Police Chief shall cause such notice to be posted at the principal entrance of the regulated use, and such posting shall be a valid means of service.

(2) An applicant, licensee, or complainant shall have full right to be represented by counsel, to produce witnesses and other evidence, and to cross-examine all witnesses who appear against him. Oral evidence shall be taken only upon oath or affirmation. All proceedings in such hearing shall be recorded, transcribed and conducted pursuant to KRS 13B.080-090(1)-(6), KRS 13B.100, KRS 13B.130. Witnesses may be subpoenaed, and, upon request of any party, the Hearing Officer shall issue subpoenas, and, in a proper case, subpoenas duces tecum, which shall be served and returned as in civil actions in the circuit court.

(3) The Hearing Officer shall issue findings of fact and conclusions of law and an order wherein the Hearing Officer may dismiss the complaint, or suspend or revoke a license or permit previously issued, or renew or refuse to renew a license previously issued. The Hearing Officer's order shall be served upon the applicant, licensee or all protesters in person or by registered or certified mail

to the applicant's, licensee's or protesters' last known address. If the Hearing Officer is not able to serve such order upon the licensee, or applicant, in the manner stated in this subsection, the County Police Chief shall cause such order to be posted at the principal entrance of the regulated use, and such posting shall be a valid means of service.

licensee took prompt corrective action and has now

(4) If the Hearing Officer finds and concludes from the evidence that the applicant or licensee has violated any of the provisions listed in this chapter, he or she may suspend or revoke the license issued under this chapter, or in the case of a renewal application, refuse to renew such license, in accordance with the provisions of license renewal.

(C) *Period of suspension.* The first suspension shall be for a period of at least five business days and not more than ten business days; the second suspension within any 12-month period shall be for at least ten business days and not more than 20 business days; and the third suspension during any 12-month period shall be for at least 30 business days and not more than 60 business days.

(D) *Judicial review.* Any license holder aggrieved by the decision of the Hearing Officer to suspend such license under the provisions of this section may seek judicial review in a manner provided by law.

(Ord. O-17-06, passed 1-3-07)

§ 117.18 BURDEN OF PROOF IN SUSPENSION OR REVOCATION HEARING; PRESUMPTIONS.

The burden of proof in a hearing involving the possible suspension or revocation of a license issued under this chapter shall be "by a preponderance of the evidence," regardless of the fact that some of the criteria for suspension or revocation refer to acts that may be criminal in nature and that thus would involve a higher standard of proof in another context. The Hearing Officer may take administrative notice of any conviction of a crime or civil infraction pertinent to such proceedings. Any act or omission by an entertainer, dancer, employee and/or of the owner or operator for the purpose(s) of determining whether the owner's or operator's license shall be revoked or suspended; proof by the licensee that it took diligent and reasonable measures to prevent the violations or that the particular violation was entirely unprecedented in the establishment and that the

established procedures to avoid such actions in the future may be considered in rebuttal to that presumption.

(Ord. O-17-06, passed 1-3-07)

§ 117.19 JUDICIAL REVIEW AND STAY OF ENFORCEMENT OF ORDERS.

Following a final decision by the License Inspector or Hearing Officer denying, suspending or revoking a license, or disapproving the renewal application for a license, such licensee or applicant may seek judicial review in a manner provided by law. The License Inspector or Hearing Officer shall stay enforcement of the ordinance pending the final disposition of proceedings for judicial review, during which time the status quo of the applicant will be maintained.

(Ord. O-17-06, passed 1-3-07)

§ 117.20 INFORMAL DISPOSITION OF CONTESTED CASES.

Nothing contained in this chapter shall preclude the informal disposition of contested cases by stipulation, consent order or default, or by

agreed settlement.

(Ord. O-17-06, passed 1-3-07)

§ 117.21 COMPLIANCE WITH OTHER REGULATIONS.

It shall be the further affirmative duty of the licensee of a business regulated under this chapter to comply with the building codes, zoning, fire, health and property maintenance ordinances of the county or of any municipality within which the business is located, and with the applicable regulations of departments charged with the implementation and administration of such ordinances. Failure to come into compliance with such ordinances or regulations after the county has delivered written notification of noncompliance to the business may be a basis for suspension, revocation or non-renewal of the license.

(Ord. O-17-06, passed 1-3-07)

§ 117.22 INSPECTIONS.

The License Inspector is hereby empowered to appoint inspectors of regulated uses, and the public

portions of all such businesses shall be open to the inspections of the License Inspector or inspectors appointed by him or to any member of the police department at any time during the hours open for business and at other reasonable times.
(Ord. O-17-06, passed 1-3-07)

adopt this section.
(Ord. O-17-06, passed 1-3-07)

**§ 117.23 EFFECTIVE DATE OF CHAPTER;
EXISTING BUSINESSES.**

(A) *Notice to businesses.* No later than February 21, 2007, the License Inspector shall notify each sexually oriented business regulated under this chapter of the passage of this chapter, and shall furnish a copy of the chapter to the person(s) identified as the primary owner(s) of the business.

(B) *Filing of application.* Each notified sexually oriented business regulated under this chapter shall submit a completed application for such license, in the manner provided by this chapter, no later than March 1, 2007.

(C) *Effect of failure to file application.* If the notified sexually oriented business regulated under this chapter fails to submit a completed application during the time provided in division (B) of this section, the enforcement provisions of this chapter shall become effective no later than 45 days after notification of the passage of this chapter.
(Ord. O-17-06, passed 1-3-07)

§ 117.24 COUNTYWIDE APPLICABILITY.

(A) Pursuant to KRS 67.083(7), this section shall be enforced throughout the entire area of the county to include the unincorporated and incorporated areas of the county unless the legislative body of a city within the county has adopted an ordinance pertaining to the same subject matter, which is the same as or more stringent than the standards that are set forth in this section. A copy of section shall be forwarded to the Mayor of each city in the county.

(B) The City of Newport has previously adopted its own sexually oriented business regulations which are considered as stringent or more stringent than the standards set forth in this section. The City of Newport intends to continue to enforce its own ordinance and is, therefore, exempt from the provisions of this section unless the City of Newport takes affirmative action in the future to

§ 117.99 VIOLATION OF CHAPTER; PENALTY.

(A) *Violations defined.* Any person who commits any of the following violations of this chapter shall be subject to penalty as provided in this section. These penalties are separate from and shall be administered separately from the points assessments and license-related penalties under §§ 117.14 and 117.15, regardless of the fact that the same factual circumstances may lead to penalty under this section and also affect the ability of the individual to continue to hold a license. The following shall be prosecutable violations of this chapter:

(1) To operate any establishment subject this chapter without the license required by this chapter;

(2) To operate any establishment subject this chapter at a location other than the location licensed under this chapter;

(3) To operate any establishment subject to this chapter while a license issued under this chapter is suspended or revoked;

(4) To submit a license application that contains untruthful statements;

(5) To fail to disclose accurately the names and backgrounds of any applicant, applicant's spouse, or partners, shareholders, members, officers or directors of any applicant under this chapter;

(6) To present sexually oriented entertainment in a place or manner inconsistent with the standards set forth in § 117.14(A)(13);

(7) To present motion pictures in a place or manner inconsistent with the standards set forth in § 117.14(A)(14);

(8) For a licensee or licensed manager for a licensee to knowingly allow any of the following: persons under the age 18 inside the premises of a business defined as a sexually oriented media store or sex shop; persons under the age 21 inside the premises of a business with onsite sexually oriented entertainment; gambling anywhere on the premises; unlawful sale of controlled substances anywhere on the premises; sexual activity on the premises; or prostitution or the solicitation of prostitution on the premises. For purposes of this paragraph, if an employee of licensee or an entertainer on the premises of the licensee is directly involved in the prohibited activity, the licensee shall be presumed to

have knowingly allowed the prohibited activity. If a prohibited activity occurs repeatedly under similar circumstances or involving the same persons, the licensee shall be presumed to have knowingly allowed the prohibited activity; the licensee shall have the burden of disproving such presumptions.

(B) *Penalty for violation.* A first violation of this chapter, in accordance with division (A) of this section, shall be a Class B Misdemeanor; a second violation within two years of a previous violation shall be a Class A Misdemeanor. Such misdemeanors shall be subject to such penalties as are provided under the Kentucky statutes.

(C) *Warning procedure.*

(1) For a violation of division (A)(4) or (5) of this section, the License Inspector shall send written notice of the violation to the licensee; if the licensee cures such violation within five days of receiving such notice and pays a penalty and processing fee of \$500, then there shall be no further penalty or prosecution for such violation.

(2) For a violation division (A)(6), (7) or (8) of this section, the police officer or other official discovering the violation shall issue a written notice of violation to the person(s) directly involved in the

violation and to the manager on duty. If the manager takes effective action to stop the violation after such notice, the officer or other official shall not cite the individuals, the manager or the licensee further for the same violations on the same evening; the initial violations, however, shall be subject to prosecution and other sanctions in accordance with the terms of this chapter. If an officer discovers the same violation in the same establishment within 90 days after such a warning is given, no further warning is required and each violation may be cited, assessed points and made subject to prosecution and other penalties.

(D) *Separate remedies.* The penalties for violation of this chapter are separate and in addition to established criminal, county, and municipal penalties for direct involvement in such crimes as unlawful sale of a controlled substance or prostitution. One or more persons may be prosecuted for violation of this chapter regardless of whether the License Inspector takes action for suspension or revocation of the license of the business involved as a result of the same or related actions.

(Ord. O-17-06, passed 1-3-07)

CHAPTER 118: TRANSIENT ROOM TAX

Section

118.01	Levy of transient room tax	business as motor courts, motels, hotels, inns or like
118.02	Levy of special transient room tax	or similar accommodations businesses in Boone,
118.03	Filing of tax return	Campbell and Kenton Counties, Kentucky, and
118.04	Penalty for unpaid taxes	every
118.05	Payment of taxes, penalties and interest	
118.06	Use of money collected	
118.07	Agent	
118.08	Definition	
118.09	Reports required	
118.10	Provision of documents	
118.11	Confidentiality of documents	
118.12	Examination of books, papers and records	
118.13	Violations and penalty	
118.14	Effectiveness of chapter	

§ 118.01 LEVY OF TRANSIENT ROOM TAX.

There is hereby continued, imposed and levied a transient room tax of 3% of the rent for every occupancy of a suite, room or rooms, charged by all persons, companies, corporations or other like or similar persons, groups or organizations doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses in Boone, Campbell and Kenton Counties, Kentucky, and every such person, companies, corporations or like or similar persons, groups or organizations (the "taxpayer") shall pay said tax monthly to the Treasurer of the Northern Kentucky Convention and Visitors Commission ("Treasurer"). The Treasurer shall have the responsibility of collecting the tax imposed by this chapter.

(Ord. O-7-95, passed 3-15-95)

§ 118.02 LEVY OF SPECIAL TRANSIENT ROOM TAX.

There is hereby imposed and levied a special transient room tax of 1% of the rent for every occupancy of a suite, room or rooms, charged by all persons, companies, corporations or other like or similar persons, groups or organizations doing

such person, companies, corporations or like or similar persons, groups or organizations (the "taxpayer") shall pay said tax monthly to the Treasurer of the Northern Kentucky Convention and Visitors Commission ("Treasurer") all of the taxes herein imposed upon the rent charged during each calendar month. The Treasurer shall have the responsibility of collecting the tax imposed by this chapter.

(Ord. O-7-95, passed 3-15-95)

§ 118.03 FILING OF TAX RETURN.

Within 20 days after the end of each calendar month, the taxpayer shall file with the Treasurer, a tax return on the form established by the Commission setting forth the amount of rent charged during said month and shall pay the amount of transient room tax and special transient room tax due for said month within said 20 day period.

(Ord. O-7-95, passed 3-15-95)

§ 118.04 PENALTY FOR UNPAID TAXES.

Any transient room taxes and/or special transient room taxes, or any part of either, imposed by this chapter which remain unpaid after they become due shall be subject to interest at the rate of 1% per month for any calendar month or part thereof that the taxes shall remain unpaid until paid. Further, if any transient room taxes and/or special transient room taxes or part thereof, shall remain unpaid after they become due, there shall be added and imposed a penalty of 10%.

(Ord. O-7-95, passed 3-15-95)

§ 118.05 PAYMENT OF TAXES, PENALTIES AND INTEREST.

Every person, company or corporation or other like or similar person, group or organization doing business as a motor court, motel, hotel, inn or like or similar accommodations businesses in Boone, Campbell or Kenton Counties, Kentucky shall be liable for and shall pay all taxes, penalties and interest, herein imposed when due.

(Ord. O-7-95, passed 3-15-95)

§ 118.06 USE OF MONEY COLLECTED.

The money collected from the imposition and levy of the special transient room tax shall be used solely for the purpose of meeting the operating expenses of a convention center(s) operated by the Center Corporation and for the purposes set forth in KRS 91A.350 et seq. and KRS 154.90-005 et seq. (Ord. O-7-95, passed 3-15-95)

Auditor of Public Accounts of the Commonwealth of Kentucky to the extent each of said documents are available to the Center Corporation. (Ord. O-7-95, passed 3-15-95)

§ 118.07 AGENT.

The Commission shall act as the agent of the Center Corporation in all matters relating to the collection and enforcement of the special transient room tax and the Treasurer of the Commission shall by the first business day of each calendar month remit and pay over to the Center Corporation any and all special transient room taxes (including interest and penalties as defined herein) collected by him or her for the benefit of the Center Corporation for the previous return period. (Ord. O-7-95, passed 3-15-95)

§ 118.08 DEFINITION.

The term *TRANSIENT ROOM*, as such term relates to the transient room tax and the special transient room tax heretofore or hereafter imposed, levied and/or enacted, shall have the same meaning and effect as contained within KRS 91A.350 et seq. (Ord. O-7-95, passed 3-15-95)

§ 118.09 REPORTS REQUIRED.

The Treasurer will furnish such reports as the Fiscal Courts of Boone, Campbell or Kenton Counties, Kentucky shall from time to time require, including, but not limited to, copies of the Commission's annual budget and audited financial statements. (Ord. O-7-95, passed 3-15-95)

§ 118.10 PROVISION OF DOCUMENTS.

The Center Corporation shall furnish to the Fiscal Courts of Boone, Campbell and Kenton Counties, Kentucky, a copy of its annual operating budget and of the annual audit provided for in KRS 154.90-020 and conducted by the office of the

§ 118.11 CONFIDENTIALITY OF DOCUMENTS.

Any information gained by any official or agent or employee of Boone, Campbell or Kenton County, of the Northern Kentucky Convention and Visitors Commission and/or of the Northern Kentucky Convention Center Board as a result of any returns, investigations or verifications required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law.

(Ord. O-7-95, passed 3-15-95)

§ 118.12 EXAMINATION OF BOOKS, PAPERS AND RECORDS.

The Treasurer or any agent or any employee designated by him or her is hereby authorized to examine the books, papers and records of any taxpayer subject to this chapter in order to determine the accuracy of any return made, or, if no return was made, to ascertain the amount of tax due under the terms of this chapter, of the taxes, or part thereof, which remain unpaid.

(Ord. O-7-95, passed 3-15-95)

§ 118.13 VIOLATIONS AND PENALTY.

Any taxpayer who shall fail, neglect or refuse to make any return or fail, neglect or refuse to pay over to the Treasurer any taxes imposed by this chapter, or who shall knowingly make any incomplete, false or fraudulent return or who shall attempt to do anything whatsoever to avoid payment of the transient room tax and/or special transient room tax or any part thereof imposed by this chapter, shall, upon conviction be subject to a fine or penalty of not less than \$50 nor more than 30 days, or both, for each offense. Such criminal penalties to be in addition to the penalties imposed in § 118.03.

(Ord. O-7-95, passed 3-15-95)

§ 118.14 EFFECTIVENESS OF CHAPTER.

The transient room tax herein continued and levied and the special transient room tax herein imposed and levied, shall continue in effect from year to year until altered, amended or repealed as provided by law.

(Ord. O-7-95, passed 3-15-95)

CHAPTER 119: USED PROPERTY BUSINESS

Section	
119.01	Definitions
119.02	License required
119.03	Requirements for records of transactions
119.04	Requirements for storage and holding property
119.05	Dealing with minors prohibited
119.06	Hours of operation
119.07	Countywide applicability
119.99	Penalty

83A.088, officers of the Transportation Cabinet responsible for law enforcement, officers of the Department of Corrections responsible for law enforcement, fire marshals and

§ 119.01 DEFINITIONS.

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

CONSIGNMENT. A transaction in which a person/bailor delivers goods to a merchant for the purpose of sale and where the merchant acts as the bailee or agent for the goods and markets such goods for sale on behalf of the person/bailor. The merchant does not acquire ownership or title to such goods at anytime, but may receive a commission upon the sale of the consigned goods.

LAW ENFORCEMENT OFFICER. An employed member of a lawfully organized police unit or police force of county, city or metropolitan government of the Commonwealth of Kentucky who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, or local unit of government, as well as sheriffs, sworn deputy sheriffs, campus police officers, public airport authority police officers, and state or federal peace officers responsible for law enforcement. Excluded from the definition of **LAW ENFORCEMENT OFFICER** are special local police officers, city marshals and deputy marshals, constables and deputy constables, coroners and deputy coroners, auxiliary and reserve police appointed under KRS 95.160 or 95.445, citation and safety officers authorized by KRS 83A.087 and

deputy fire marshals, campus security officers who are commissioned under KRS 164.950, private security guards and private security patrolmen.

LEADS ONLINE. A national web based electronic online internet reporting service and investigative system utilized by law enforcement to automatically collect and analyze transaction records from various business entities or individuals that acquire merchandise and items of personal property from the general public, operating under the web address of www.leadsonline.com.

PRECIOUS METALS. Metals including but not limited to gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, silver, and their alloys, in forms such as bars, foils, leaves, powder, sheets, solutions, wire, jewelry or any other metal that may be owned as investment instruments whether physical metals or as futures or options contracts, as a possible protection against inflation.

SCRAP. Any waste and/or new metal products, including, but not limited to, old, unwanted metal, building supplies, wrought iron, wiring, piping,

copper tubing, aluminum (except aluminum cans), steel and surplus materials, automobiles and automotive parts.

SCRAP DEALER. Any person engaged in the business of operating a scrap yard and/or engaged in the sale, purchase, exchange and/or acquisition of scrap.

SCRAP YARD. Any premises where a business is located that deals in the sale, purchase, exchange and/or acquisition of scrap, including recycling operations.

USED PROPERTY BUSINESS. An occupation, business, or profession that normally, usually, or customarily engages in the acquisition and/or physical possession of, or a possessory, security or ownership interest in, used or previously owned tangible personal property by barter, pawn, purchase, exchange or otherwise, except for used motor vehicles, used motor vehicle parts, scrap yard and scrap dealer, consignments of used tangible personal property for sale and purchases of precious metals

directly from manufacturers or wholesalers for retail or wholesale inventories or from other Used Property Businesses that were not purchased from the general public, which are specifically excluded from this meaning. **USED PROPERTY BUSINESS** includes but is not limited to such businesses as are commonly known as pawn shops, jewelry stores, exchanges, game exchanges or stores (for video or electronic games), and any other business that engages in the conduct described in this definition or who engage in the purchase, sale, exchange or possession of precious metals.
(Ord. O-05-13, passed 5-15-13)

(3) A detailed description of the property, including all applicable terms of size, shape, color, make, model, serial number, other identifying number, weight, and any other typically recognized descriptor applicable to the property.

§ 119.02 LICENSE REQUIRED.

It shall be unlawful for any person, firm, organization, or corporation to conspire, cause, permit, promote, allow, aid, assist, encourage or engage in any ownership or operation of any Used Property Business in Campbell County without first obtaining a valid Business License, Occupational License, and any other legally required license or permit from any and all units of government, within the boundaries of which such Used Property Business conducts business.
(Ord. O-05-13, passed 5-15-13) Penalty, see § 119.09

§ 119.03 REQUIREMENTS FOR RECORDS OF TRANSACTIONS.

(A) Any person, firm, organization, or corporation engaged in the operation of a Used Property Business shall maintain records of all transactions. Such records shall include the following:

(1) A unique and separate transaction number for each separate item of such used tangible personal property. If a transaction contains more than one item of tangible personal property the transaction number can cover all items in said transaction so long as all items are clearly identifiable.

(2) A color photograph of the item(s) of such used tangible personal property for each individual seller of used business property to a Used Property Business, in digital format known as "JPEG". If a photograph contains more than one item of tangible personal property per transaction then each item of used tangible property shall be clearly identifiable.

(4) The time and date of the acquisition as well as the time and date of all subsequent transactions involving that piece of property.

(5) The full name of the employee or clerk who is conducting the transaction on behalf of the Used Property Business.

(6) Identifying information of the person with whom the transaction is made, including the following:

- (a) Full name;
- (b) Complete address;
- (c) Phone number;
- (d) Email address;
- (e) Date of birth;
- (f) Sex;
- (g) Race;
- (h) Height and weight;
- (i) Hair and eye color; and
- (j) A color scan of the person's valid

driver's license or current Identification card issued by Kentucky or by another state in digital format known as "JPEG".

(7) The written signature of the person with whom the transaction is made, indicating his or her affirmation of the transaction.

(8) A Used Property Business shall not enter into any cash transaction for the purchase of any precious metals or used tangible property regulated herein. Payment by a Used Property Business for the purchase of precious metals or used tangible property regulated herein shall be made by check issued to the seller and payable to the seller.

(B) A written or printed receipt containing the information noted above must be issued by the Used Property Business to any person conducting any transaction as described above.

(C) Further, all records described above must be entered on Leads Online. Law enforcement officers of each city within the county shall assist each Used Property Business with the initial setup, registration and utilization of the reporting requirements with Leads Online and there shall be no costs to any Used Property Business associated therewith.

(D) The records described above must be maintained for a period of at least one year following the acquisition of the property.
(Ord. O-05-13, passed 5-15-13) Penalty, see § 119.99

§ 119.04 REQUIREMENTS FOR STORAGE AND HOLDING PROPERTY.

Any Used Property Business shall maintain possession of any used tangible property it acquires through the course of business in the following manner:

(A) A tag or label must be affixed to the property bearing the same number as the transaction related to that piece of property.

(B) The property must be held for a period of no less than seven calendar days after the date on which it was received or on which the property was entered into the Leads Online system, whichever is longer.
(Ord. O-05-13, passed 5-15-13) Penalty, see § 119.99

§ 119.05 DEALING WITH MINORS PROHIBITED.

No Used Property Business shall directly or indirectly purchase or receive, by way of barter or exchange or otherwise, any used tangible property or precious metals from any minor.
(Ord. O-05-13, passed 5-15-13) Penalty, see § 119.99

§ 119.06 HOURS OF OPERATION.

No Used Property Business shall purchase, sell, exchange or receive any precious metals or other used tangible property from any person between the hours of 9:00 p.m. and 7:00 a.m.
(Ord. O-05-13, passed 5-15-13) Penalty, see § 119.99

§ 119.07 COUNTYWIDE APPLICABILITY.

(A) Pursuant to KRS 67.083(7), this chapter shall be enforced throughout the entire area of the county to include the unincorporated and incorporated areas of the county unless the legislative body of a city within the county has adopted an ordinance pertaining to the same subject matter, which is the same as or more stringent than

the standards that are set forth in this chapter. A copy of this chapter shall be forwarded to the Mayor of each city in the county.

(B) The City of Newport has previously adopted its own precious metal regulations which are considered as stringent or more stringent than the

standards set forth in this chapter. The City of Newport intends to continue to enforce its own ordinance and is, therefore, exempt from the provisions of this chapter unless the City of Newport takes affirmative action in the future to adopt this chapter or repeals its precious metal ordinance. (Ord. O-05-13, passed 5-15-13)

§ 119.99 PENALTY.

(A) *Criminal penalties, company or corporation.* Each separate violation of any section of this chapter

committed by a business, company, or corporation, shall be a Class B Misdemeanor for which the criminal fine shall not exceed the maximum amount of \$5,000.

(B) *Criminal penalties, individual.* Each separate violation of any section of this chapter, committed by an individual shall be a Class B Misdemeanor for which the criminal fine shall not exceed the maximum amount of \$250, and/or imprisonment not to exceed 90 days. (Ord. O-05-13, passed 5-15-13)

