

ORDINANCE NO. **BG2020 - 23**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE REPEALING EXISTING CHAPTER 18
AND ADOPTING REVISED VERSION OF THE CITY
OF BOWLING GREEN CODE OF ORDINANCES
CHAPTER 18 (OCCUPATIONAL LICENSE FEES
AND TAXES) TO MAKE VARIOUS CHANGES

WHEREAS, the Department of Finance regularly reviews Chapter 18 (Occupational License Fees and Taxes) to determine if changes need to be made; and,

WHEREAS, the Department of Finance recommends that various administrative revisions be made to the Chapter, which include but are not limited to restructuring and reorganizing the content of the Chapter to be easier to comprehend, removing duplicate or obsolete language, and adding additional clarifying language; and,

WHEREAS, due to the extent of the restructuring and recommended changes, it has been determined to be in the best interest of the City to repeal the existing Chapter 18 and to adopt a revised Chapter 18; and,

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 18 (Occupational License Fees and Taxes) is hereby repealed in its entirety and replaced with the following:

18-1 DEFINITIONS.

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

“Association” shall mean a partnership, limited partnership or any other form of unincorporated enterprise, owned by two (2) or more persons.

“Business” shall mean any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. “Business” shall not include the usual activities of board of

trade, chambers of commerce, trade associations or unions, or other associations performing services usually performed by trade associations or unions. "Business" shall not include non-profit organizations, except to the extent that there is unrelated business income from a trade or business regularly carried on that is not substantially related to the charitable, education or other purpose that is the basis of the organization's exemption.

"Business entity" shall mean each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization or other legal entity through which business is conducted.

"Business of Renting or Leasing Real Estate" shall mean any person or business entity owning or leasing any commercial, industrial, residential, agricultural or other property in the City, whether or not the property is currently leased or occupied.

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

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

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

"Conclusion of the Federal Audit" shall mean the date that the adjustments made by the

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Internal Revenue Service (IRS) to net income as reported on the person's or business entity's federal income tax return become final and unappealable.

"Corporation" shall mean a corporation or joint stock association organized under the laws of the United States, the Commonwealth of Kentucky or any other state, territory or foreign country or dependency.

"Employee" shall mean any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

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

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

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

"Final Determination of the Federal Audit" shall mean the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

"Fiscal Year" shall mean an accounting period of twelve (12) months ending on the last day of any month other than December.

"Individual" shall mean a natural person.

"Internal Revenue Code" shall mean the Internal Revenue Code in effect on December 31 of

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the year the fee or 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 fee or tax is due, that would otherwise terminate.

“Licensee” shall mean and include any person or business entity required to file a return or to pay an occupational license fee, also referred to as an occupational license tax, under this Chapter.

“Local Business” shall be defined as any person, business or business entity that either: 1) owns its business site in the City; 2) has a valid lease for its business site from the property owner or manager that is for a period over six (6) uninterrupted months; or 3) involves regular or routine visits to an established customer base within the City. A person or business that has regular or routine visits to an established customer base within the City shall be defined as either: 1) a business that has an existing customer base within the City; 2) a business that is working as a subcontractor on a regular or routine basis under a registered local business; or 3) a business that the Chief Financial Officer, or designee, has determined has produced sufficient evidence to show the business’ close proximity to the City would constitute regular visits.

“Net Profit” shall mean gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:

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

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

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

(d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes with the City following the IRS guidelines related to exempt individuals; and,

(e) Include contributions to KEOGH (HR-10) Retirement Plans, Simplified Employee Pension (SEP) Plans, medical insurance premiums whether paid on behalf of partners, shareholders or individual owners, and any other deductions that benefit non-employee individuals.

(f) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States and exclude any income or deduction as set out in the provisions of this Chapter.

(g) Exclude the amount of foreign dividend gross-up under Section 78 of the Internal Revenue Code.

(h) Exclude the amount of Subpart F income included under Section 951 of the Internal Revenue Code but not actually received.

“Non-profit Organization” shall mean funds, foundations, corporations, associations or other non-profit entities 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 entity inures to the benefit of any private person.

“Nonresident” shall mean an individual, corporation, partnership, fiduciary, association or other entity that is not domiciled or does not have a business situs in the City.

“Occupation, Trade, Profession or Other Activity” shall mean and include the doing of any kind of work, the rendering of any kind of personal service, or the holding of any kind of position or job within the City by any clerk, laborer, tradesman, manager, official or other employee, including any

nonresident of the City who is employed by an employer as defined in the Chapter, where the relationship between the individual performing the services and the person for whom such services are rendered, is, as to those services, the legal relationship of employer and employee, including also a partner of the firm or officer who receives a salary for his personal services rendered in the business of such firm or corporation and shall also include (an officer or employee employed) either by election or appointment by the Federal, State, County or City, where the services of such official or employee are rendered within the City.

“Occupational License Fee” shall mean for the purposes of this Chapter, the same meaning as occupational license tax and those terms shall be interchangeable, and shall include net profit license fees, withholdings license fees and transient permits.

“Peddlers” shall mean any person or business entity which passes through the City temporarily for the purpose of conducting a business, trade, occupation or profession for gain or profit which involves the buying, selling or exchanging of goods or services and who is not a contractor as defined in Chapter 6 (Building Regulations) of the City’s Code of Ordinances. These businesses cannot produce a valid lease for a permanent building which is properly zoned for business use or are conducting business on or beside public rights-of-way, sidewalks, parking lots, roadways, vacant lots, tents, other outdoor areas or door to door.

“Person” shall mean any natural person, whether a resident or nonresident of the City. Whenever the word “person” is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof.

“Rental or Leasing Unit” shall mean any room or rooms connected together or other structures or portions thereof constituting a separate, independent establishment or premises for rent,

lease or sublease to the occupant thereof.

“Return” or “Report” shall mean any properly completed and, if required, signed form, statement, certification, declaration or any other document permitted or required to be submitted or filed with the City.

“Sales Revenue” shall mean receipts from the sale, licensing, royalties, lease, or rental of goods, services or property.

“Sales Within the City” shall mean sales, licensing, royalties, rental or lease of merchandise delivered to a customer or deemed to have arisen from the licensee's activities within the City or services performed within the City for a customer.

“Tax District” shall mean any city or other government entity with the authority to levy taxes or occupational license fees.

“Tax Exempt Organization” shall mean funds, foundations, corporations, associations or other tax exempt organizations recognized as tax exempt by the Internal Revenue Service that are organized and operated for purposes of religious, charitable, scientific, literary, educational, civic or fraternal purposes with no part of the earnings, incomes or receipts of such entity inuring to the benefit of any private person.

“Taxable Net Profit,” in case of a person or business entity having payroll or sales revenue only within the City, shall mean net profit as defined above. “Taxable net profit,” in case of a person or business entity having payroll or sales revenue both within and without the City, shall mean net profit as defined above and as apportioned according to the provisions of this Subchapter.

“Taxable year” shall mean the calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

“Temporarily” shall mean not of a permanent nature or stay and not involving regular or routine visits to an established customer base within the City.

“Transient Business” shall mean any person or business entity which passes through the City temporarily for the purpose of conducting a business, trade, occupation or profession for gain or profit which involves the buying, selling or exchanging of goods or services and which is not a contractor as defined in Chapter 6 (Building Regulations) of the City’s Code of Ordinances. Transient businesses must possess a valid lease for their business site in the City in a permanent building properly zoned for business use that is for a period of six (6) months or less, or the activity of the business must not involve regular or routine visits to an established customer base within the City.

“Transient Contractors” shall mean any person or business entity which passes through the City temporarily conducting a business, trade, occupation or profession for gain or profit and is defined as a “specialty contractor” in Chapter 6 (Building Regulations) of the City’s Code of Ordinances.

“Transient Professional Services” shall mean any person or business entity that passes through the City temporarily for the purpose of conducting a business, trade, occupation or profession for gain or profit and which is not a transient contractor or peddler as herein defined. Transient Professional Services do not possess a valid lease for their business site in the City and do not involve regular or routine visits to an established customer base with the City, but do possess a contract or a legal agreement to provide a service to a registered local business.

18-2 BUSINESS REGISTRATION AND OCCUPATIONAL LICENSE FEES.

18-2.01 Business Registration Application and Fee Required.

a. Every person or business entity meeting the requirement of filing occupational license fees or engaged in any occupation, trade, profession or other business activity conducted for gain or profit in the City, including the business of renting or leasing real estate, except those activities described hereinbelow as Transient Businesses, Transient Professional Services, Peddlers and Transient Contractors, shall first make application in writing to the City’s Office of Occupational License on forms provided by the City before the applicant shall commence any activity subject to occupational license

fees in the City. A one-time business registration fee of fifty (\$50.00) dollars shall be made at the time of application. Licensees are required to provide written notice to the City's Office of Occupational License of any changes in name, address, the cessation of business, or any other changes which render the information supplied to the City in the license application inaccurate. Businesses changing entity type shall complete an application and pay the registration fee under the new entity name.

b. It shall be unlawful for any person or business entity to engage in any business, occupation, trade, profession, including the business of renting or leasing real estate, or other activity in the City without first having applied for and paid the business registration fee herein required. If the business registration fee is not paid prior to engaging in any business or activity, a penalty of twenty-five (\$25.00) dollars per month, or fraction thereof shall be imposed, in addition to any other penalties provided by this Chapter for the period during which any unlawful business or activity occurred.

c. In addition to the business registration requirements herein, any person or business entity conducting business in the City that does not meet the definition of a local business and is subject to the provisions of Chapter 6 (Building Regulations) of the City's Code of Ordinances defining it as a general contractor shall also be required to post a cash bond in the amount of two hundred seventy-five (\$275.00) dollars with the City at the time of registration. This bond will be held until all net profit license fee returns and employee withholdings license fee requirements have been deemed to be met by the City. The City may call on this bond at any time any fees due to the City become delinquent, after giving the entity an opportunity to pay the outstanding fees. This category of business shall also be required to file employee withholdings license fees on a monthly basis with the City.

1. All general contractors must submit a complete listing of all subcontractors being utilized within the City, including their contact information, at the time of application for a City building permit. If a complete listing is unavailable at that time, a follow-up listing must be provided to the City's Office of Occupational License upon request. Failure to comply with this requirement may result in an

interruption of the building permit process.

2. A sign giving notice of business registration requirements will be provided by the City to all general contractors. This sign shall be displayed at the construction site in a prominent location visible to all contractors (general or subcontractors) and shall remain posted during the entire construction project.

d. In addition to the business registration requirements herein, any person or business entity conducting business in the City that does not meet the definition of a transient business subject to provisions hereinbelow and does not own its business site in the City or does not have a valid lease for its business site in the City for a period over six (6) uninterrupted months shall also be required to post a cash bond in the amount of two hundred seventy-five (\$275.00) dollars with the City at the time of registration. This cash bond shall be held until all net profit license fee returns and employee withholdings fee requirements have been deemed to be met by the City. The City may call on this bond at any time any fees due to the City become delinquent, after giving the business an opportunity to pay the outstanding fees.

18-2.02 Occupational License Fees Imposed.

a. Except as provided in Section 18-2.04, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the City an occupational license fee for the privilege of engaging in such activities within the City. The occupational license fee shall be measured by 1.85% of:

1. All gross wages and compensation paid or payable in the City for work done or services performed or rendered in the City by every resident and nonresident who is an employee; and,

2. The taxable net profit from business conducted in the City by a resident or nonresident person or business entity, or thirty (\$30.00) dollars, whichever is greater.

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

c. If a person or business entity makes or is required to make a federal income tax return, the occupational license fee shall be computed for the purposes of this Subchapter 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.

18-2.03 Income Subject to Occupational License Fees.

a. Net Profits: The following income is specifically determined to be subject to the occupational license fee:

1. Income of the sales of stocks, bonds and other securities or any interest therein by brokers, business entities and persons engaged in conducting such business as investment firms, lending institutions and similar such businesses;

2. Income from the operation of warehouses, apartments, hotels, motels, hotel buildings, office buildings and similar structures;

3. A trust estate engaged in business which produces income;

4. Income of fiduciaries, defined to mean a person who holds in trust property, monies or properties to which another has a beneficial trust or interest, or who receives or controls income for another person where such a fiduciary is regularly engaged in such a business or profession; and,

5. Income earned, derived or received on the sales, rental or leasing of personal and real property, as well as losses attributable to the sale of real and personal property classified as capital

losses by the Internal Revenue Service which shall be included as income.

b. Employee Withholdings: The following income has been specifically defined as taxable wages, commission or salary and is subject to the occupational license fee:

1. Wages, salaries, other compensation, including but not limited to deferred compensation and any and all income derived from approved leave, including but not limited to vacation pay, sick leave, employer provided and paid disability payments, military leave, personal days, holidays, annual leave and other approved leave;

2. Early retirement and similar inducement payments, including but not limited to Supplemental Income Protection Program (SIPP) payments made in consideration for early retirement, or other inducements paid by employers to employees arising from the employee's service to the employer;

3. Separation payments, regardless of residency at time of payment, including (a) payments made by an employer to an employee at the time of retirement if such benefits would be subject to the withholdings license fee if paid to an active employee; (b) other benefits accrued pursuant to any employment contract or arrangement between the employer and employee; and (c) payments which are made in lieu of any payment which the employer is obligated to make to or on behalf of the employee arising from the employment to the extent that such payments would be subject to the withholdings license fee if paid to an active employee; and,

4. Life insurance premiums for coverage in excess of fifty thousand (\$50,000) dollars paid by the employer.

18-2.04 Income Excluded from Occupational License Fees.

a. The occupational license fees imposed in this Subchapter shall not apply to the following persons, business entities or specified income:

1. Any bank, trust company, combined bank and trust company, or trust, banking

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

2. Any compensation received by members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training;

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

4. Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. However, licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a net profit license fee on their net profit derived from the non-public service activities apportioned to the City;

5. Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of manufacturing or trafficking in alcoholic beverages are required to file a return, but may exclude the allocated portion of their net profits derived from the manufacturing or trafficking in alcoholic beverages;

6. Life insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky;

7. Any profits, earnings, distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings or distributions would not be taxable to an individual investor;

8. Where persons pay a 1.85% withholdings license fee on gross salaries or withdrawals paid to them by their business or partnership, such amounts paid by such business or partnership shall be deducted from such business or partnership's gross earnings before arriving at the net profit of such business or partnership;

9. Where persons are required to pay a 1.85% withholdings license fee on gross salaries or wages paid to them by a corporation, such amounts paid by such corporation as wages or salaries shall be deducted from such corporation's gross earnings before arriving at the net profits for such corporation;

10. Income from pensions, interest and dividends not specifically defined as includable;

11. Trust estates are not subject to the net profit license fee imposed by this Chapter upon the income of such trust estate, except where such trust operates a business which is subject to a net profit license fee for doing business within the City. The remainder of such trust estate is hereby exempt from any payment of net profit license fees;

12. Entities, such as Self-Directed Roth IRA or other similar retirement programs, filing a Federal Exempt Organization Business Income Tax Return as a tax exempt organization shall be required to file with the City a net profit license fee return, but the City's occupational license fees shall be waived only where no part of the unrelated trade or business income inures to the benefit of any private person. However, if the net income on the Federal return exceeds an amount whereby the net profit license fee would be greater than the net profit minimum fee, the net profit return shall be required with the full amount of fees due.

13. A fiduciary who holds in trust property, monies or properties to which another has a beneficial interest or who receives or controls income for another person is not subject to the net profit license fee imposed by this Chapter, except where such fiduciary operates a business which is subject to net profit license fee for doing business within the City. The remainder of such trust is hereby exempt from any payment of net profit license fees;

14. Income of a household worker that resides or works exclusively in a private residence. However, net profit and withholdings license fees shall be required for business entities and

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their employees conducting such type of household services;

15. Income of self-employed dancers, musicians and entertainers working in an establishment that is subject to the provisions hereinbelow related to establishments where live entertainers are contracted or providing service for a nonprofit corporation. This Section does not alleviate the requirements set out in Chapter 24 (Sexually Explicit Business License Regulations) of the City's Code of Ordinances or any other applicable City code;

16. Rental income of any person or sole proprietorship renting or leasing real estate consisting of two (2) or less residential units;

17. Pension payments made to persons retired from service after reaching a specified age or a stated period of employment;

18. Payments by an employer to employees under disability, sickness and accident benefit plans that are paid for by the employee;

19. Unemployment compensation payments by the Commonwealth of Kentucky or any other agent;

20. Payments received for personal injuries and property losses;

21. Death benefits payable to the beneficiary of an employee or to his estate, whether payable in single sum or otherwise. This shall not include wages as defined in this Chapter earned prior to death;

22. Benefits arising under the Workers' Compensation Act as compensation for disabilities sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability; or,

23. Income from the sale of real and personal property classified as capital gains by the Internal Revenue Service.

18-2.05 Apportionment of Occupational License Fees.

a. Where salaries, wages, commissions, licensing and royalty income, and other trade compensations are paid for any business, trade, occupation, profession or other activity in the City or net profits earned within the City, such net profit license fee shall be computed by obtaining the percentage which the compensation or net profit bears to the total compensation or net profit.

b. Except as provided in Subsection f. of this Section, net profits shall be apportioned as follows:

1. For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in Subsection c. of this Section, plus the sales factor, described in Subsection d. of this Section, and the denominator of which is two (2); and,

2. For business entities with sales revenue in more than one (1) tax district, by multiplying the net profit by the sales factor as set forth in Subsection d. of this Section.

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

d. The sales factor is a fraction, the numerator of which is the total sales revenue of the person or business entity in the City during the tax period and the denominator of which is the total sales revenue of the person or business entity everywhere during the tax period.

1. The sale, lease or rental of tangible personal property is in the City if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the City regardless of the free on board

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(f.o.b.) point or other conditions of the sale; or,

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

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

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

e. All partnerships, S corporations and all other entities where income is "passed through" to the owners are subject to the provisions of this Subchapter. The occupational license fee imposed in this Subchapter is assessed against income before it is "passed through" these entities to the owners.

f. If the apportionment provisions of this Section do not fairly represent the extent of the person's or business entity's activity in the City, the person or business entity may petition the City or the City may require, in respect to all or any part of the person's or business entity's business activity, if reasonable:

1. Separate accounting;
2. The exclusion of any one (1) or more of the factors;
3. The inclusion of one (1) or more additional factors which will fairly represent the person's or business entity's business activity in the City; or,
4. The employment of any other method to effectuate an equitable allocation and apportionment of net profits.

18-2.06 Employers Required to Withhold and File Return.

a. Every employer making payment of compensation to an employee shall deduct and withhold from the compensation a withholdings license fee consisting of 1.85% of gross wages calculated under the provisions of this Subchapter.

b. When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the City, the withholdings license fee shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the City. In order for the City to verify the accuracy of a taxpayer's reported wages under this Subsection, the responsible person or business entity shall maintain adequate records.

c. Every employer required to deduct and withhold the occupational license fee under this Section shall report the wages or compensation from which employee withholdings fees have been withheld and submit payment for quarterly periods ending March 31, June 30, September 30 and December 31 of each year on or before the last day of the month following the end of each quarter, unless the employer is required at the sole discretion of the City to report and make monthly payments. All monthly payers shall make payment by the 15th of the month following the period end.

d. Employers with employees in Special Taxing Districts as defined in Chapter 11 (Finance, Taxation and Economic Development) of the City's Code of Ordinances shall report separate wage and tax information on those employees.

e. Every employer who fails to withhold or pay to the City any sums required by this Subchapter to be withheld and paid shall be personally and individually liable to the City for any sum or sums withheld or required to be withheld in accordance with the provisions of this Subchapter.

f. Every employer required to deduct and withhold a fee under this Section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the City a reconciliation of the withholdings license fee withheld where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements or a

detailed employee listing with the required equivalent information, as determined by the City, shall be submitted.

g. Every employer shall furnish each employee a statement (W-2) on or before January 31 of each year showing the amount of compensation and withholdings license fee deducted by the employer from the compensation paid to the employee for payment to the City during the preceding calendar year.

h. An employer shall be liable for the payment of the fee required to be deducted and withheld under this Section. The employer shall also be liable for any shortfall in payment following completion of the annual reconciliation.

i. Notwithstanding the provisions of this Section, every employee receiving compensation in the City subject to the fee imposed under this Subchapter shall be personally liable for any amount due should the employer fail to withhold. In all cases where the employer does not withhold the fee levied under this Subchapter from the employee, such employee or employees shall be responsible for filing with the City each quarter in the same manner as if they were the employer.

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

18-2.07 Net Profit License Fee Returns Required.

a. All net profit returns for the preceding taxable year shall be made by April 15 of each year or as extended by the City's Chief Financial Officer, except returns made on the basis of a fiscal year, which shall be made by the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year. Blank forms for returns shall be supplied by the City.

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b. Every person or business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its net profit license fee return with the City. Whenever, in the opinion of the City, it is necessary to examine the federal income tax return of any person or business entity in order to audit the return, the City may compel the person or business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. The City may also require copies of reports of adjustments made by the federal government.

c. The City may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any person or business entity, the attendance of a representative of the business or of any other person having the requisite knowledge.

d. The full amount of the unpaid fee payable by any person or business entity, as appears from the face of the return, shall be paid to the City at the time prescribed for filing the net profit license fee return, determined without regard to any extension of time for filing the return. Where any portion of the net profit license fee so due shall have been deducted at the source, credit for such amount shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of the filing of the net profit license fee return as hereinabove provided.

18-2.08 Net Profit Filing Deadline Extensions.

a. The City may grant any person or business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the City and the person or business entity, for filing its return, if the person or business entity on or before the date prescribed for payment of the net profit license fee, requests the extension and pays the amount properly estimated as its fee.

b. Application for extension must be accompanied by payment of:

1. An estimated fee in an amount not less than ninety (90%) percent of the total fee

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as finally determined; or,

2. An estimated fee in an amount equal to the total liability for the most recent year;

and,

3. In no case shall the estimated fee paid with the extension be less than the minimum thirty (\$30.00) dollar fee.

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

18-2.09 Required to Report Federal Form 1099 Payments.

a. Whenever the City deems it necessary, the City may by notice served to the person or business entity require businesses who make Federal Form 1099 non-employee compensation payments to persons or business entities, other than employees for services performed within the City, to maintain records of such payments and to report such payments to the City. Said payments must be reported by remitting Federal Form 1099 of the year following the close of the calendar year in which the non-employee compensation was paid. If a person or business entity is not required to remit Federal Form 1099 to the IRS, including but not limited to payments less than six hundred (\$600) dollars, they are still liable to remit the equivalent information to the City. The information required to be reported by said licensee shall include:

1. Payer's name, address, social security and/or Federal identification number;
2. Recipient's name and address;
3. Recipient's social security and/or Federal identification number;
4. Amount of non-employee compensation paid in the calendar year; and,
5. Amount of non-employee compensation earned in the City for the calendar year.

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b. Persons who receive non-employee compensation payments for services performed within the City of Bowling Green are required to pay local occupational license fees on that income at the rate of 1.85%, unless registered and filing a net profit return.

18-2.10 Refund or Credit of Occupational License Fees or Cash Bond.

a. Where there has been an overpayment of occupational license fees, a refund or credit shall be made to the extent of overpayment only if a written application or amended return for the refund or credit is received by the Office of Occupational License within two (2) years from the date the overpayment was made unless otherwise prescribed by law. If a deficiency or nonpayment of fees or taxes exists for a previous year, the overpayment may be applied as a credit to the balance due or any applicable penalty or interest.

1. In any case where the assessment period has been extended by an agreement between the person or business entity and the City, the limitation contained in this Section shall be extended accordingly.

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

3. For the purposes 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.

b. An employee who has compensation attributable to activities performed outside the City, based on time spent outside the City, whose employer has withheld and remitted to the City the withholdings license fee on the compensation attributable to activities performed outside the City may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the City may confirm with the employer the percentage of time spent outside the City and the amount of compensation

attributable to activities performed outside the City prior to approval of the refund.

c. Any person or business entity required to file a two hundred seventy-five dollar (\$275.00) cash bond shall have a minimum of one (1) year and a maximum of two (2) years from the date of bond payment to request a refund of the bond. Upon receipt of a bond refund request, if all net profit license fee returns and employee withholdings fees are deemed to be filed and paid in full, a refund of the bond will be issued. If at any time during the two (2) year period a return is not filed or the taxes not paid, the bond shall be retained by the City and no portion shall be eligible for a refund. At the end of the two (2) year period, if no request has been made for a refund, the remaining bond payment shall be forfeited to the City.

d. In no event shall any refund or credit be made for any payment upon any occupational license fees, unless the refund or credit is submitted and filed in strict compliance with the foregoing provisions of this Subchapter upon such refund claim forms or amended return forms as may hereafter be promulgated by the Chief Financial Officer of the City.

e. The authority to refund or credit overpayments of fees or taxes collected pursuant to this Subchapter is vested exclusively in the City.

18-2.11 Audit Provisions.

a. As soon as practicable after each return is received, the City may examine and audit the return. If the amount of fee or tax computed by the City is greater than the amount returned by the person or business entity, the additional fee or tax shall be assessed and a notice of assessment mailed to the person or business entity by the City within five (5) years from the date the return was filed, except as otherwise provided as follows:

1. In the case of a failure to file a return or of a fraudulent return, the additional fee or tax may be assessed at any time.

2. In the case of a return where a person or business entity understates net profits or

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omits an amount properly includable in net profits, or both, which understatement or omission, or both, is in excess of twenty-five (25%) percent of the amount of net profits stated in the return, the additional fee or tax may be assessed at any time within six (6) years after the return was filed.

3. In the case of an assessment of additional fee or tax relating directly to adjustments resulting from a final determination of a federal audit, the additional fee or tax may be assessed before the expiration of the times provided in this Section or six (6) months from the date the City receives the final determination of the federal audit from the person or business entity, whichever is later.

4. The times provided in this Section may be extended by agreement between the person or business entity and the City. For the purposes 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. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

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

c. The City may initiate a civil action for the collection of any additional fee or tax within the times prescribed in this Section.

18-2.12 Administrative Provisions.

a. No suit shall be maintained in any court to restrain or delay the collection or payment of the fees or taxes levied by the provisions of this Subchapter.

b. Every person or business entity subject to occupational license fees governed by the provisions of this Subchapter shall keep records, render under oath statements, make returns and comply with rules, as the City from time to time, may prescribe. Whenever the City deems it necessary, the City may require a person or business entity, by notice served to the business, to make a return, render statements under oath or keep records, as the City deems sufficient to determine the tax liability of the

business.

18-2.13 Interest and Penalties.

a. A person or business entity subject to a fee on net profits or an employer subject to withholding requirements as set out hereinabove may be subject to a penalty equal to five (5%) percent of the tax due for each calendar month or fraction thereof if the person or business entity:

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

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

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

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

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

d. The City may enforce the collection of the occupational license fees due under the provisions of this Subchapter and any fees, penalties and interest as provided in this Section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the City shall be entitled to recover all court costs.

e. In addition to the penalties prescribed in this Section, any person, 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 fee, tax or amount collected, or any

part thereof, shall be guilty of a Class A misdemeanor.

f. 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 the provisions of this Subchapter 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.

g. A return for the purpose of this Section shall mean and include any return, declaration, or form prescribed by the City and required to be filed with the City by the provisions of this Subchapter, or by the rules of the City or by written request for information to the person or business entity by the City.

18-3 TRANSIENT BUSINESSES, TRANSIENT PROFESSIONAL SERVICES, PEDDLERS AND TRANSIENT CONTRACTORS.

18-3.01 Scope.

a. Those subject to this Subchapter include, but are not limited to peddlers, hucksters, solicitors, salespersons, photographers, circuses, carnivals, amusement companies and other such persons, partnerships, limited liability companies, corporations or other entities as described in the definitions hereinabove.

b. Any person, partnership, business, limited liability company, registered limited liability partnership, corporation or other entity which regularly services, delivers, buys or sells goods and services to retail, wholesale or other permanent businesses in the City or contractors as defined in Chapter 6 (Building Regulations) shall not constitute a transient business or peddler, but shall be subject to the provisions and requirements of this Subchapter.

18-3.02 Application and Permit Required.

a. It shall be unlawful for any transient business, transient professional service, peddler or transient contractor or representative thereof to engage in any activity in the City without the representatives thereof having first applied for and obtained a permit to do so as provided herein and having otherwise complied with the terms and provisions of this Subchapter.

b. A representative of a transient business, transient professional service, peddler or transient contractor desiring to engage in business within the City shall first make application in writing to the City's Office of Occupational License on forms provided by the City before the applicant shall commence any activity or conduct any business. Such application shall state the name, permanent address and telephone number of the business, entity type and federal identification number of the business. In addition, the City may request information about the type or nature of the goods or services to be provided as well as details about other persons working in the City associated with the business, such as the name, address, telephone number, social security number and other personal data.

c. The Office of Occupational License, upon receipt of a completed application and payment of the permit fee, shall issue a permit to the representative of the business. The permittee shall have this permit in his immediate possession at all times when engaging in business in the City and shall display it upon demand to an official of the City.

d. Transient businesses or peddlers who are not conducting business door-to-door shall be issued a permit sign setting forth the business name, issue date and expiration date of the permit. This permit sign shall be prominently displayed in an area open to public view.

18-3.03 Transient Permit Fees Imposed.

a. Any person or business entity meeting the definition of a transient business shall first pay to the City a daily fee based on the number of employees working in the City. The daily fee shall be two and one-half (\$2.50) dollars if there are three (3) employees or less, with a minimum fee of ten (\$10.00) dollars covering a period of four (4) consecutive days. The daily fee shall be five (\$5.00) dollars

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if there are four (4) or more employees, with a minimum fee of twenty (\$20.00) dollars covering a period of four (4) consecutive days.

b. Any person or business entity meeting the definition of a peddler shall first pay to the City a daily fee based on the number of employees working in the City. Any peddler that is not conducting business door-to-door must also provide written proof of permission from the property owner. The daily fee shall be twenty-five (\$25.00) dollars if there are three (3) employees or less, with a minimum fee of one hundred (\$100.00) dollars covering a period of four (4) consecutive days. The daily fee shall be fifty (\$50.00) dollars if there are four (4) or more employees, with a minimum fee of two hundred (\$200.00) dollars covering a period of four (4) consecutive days.

c. Any person or business entity meeting the definition of a transient contractor shall first pay to the City a daily fee based on the number of employees working in the City. The daily fee shall be twelve and one-half (\$12.50) dollars if there are three (3) employees or less, with a minimum fee of fifty (\$50.00) dollars covering a period of four (4) consecutive days. The daily fee shall be twenty-five (\$25.00) dollars if there are four (4) to fifteen (15) employees, with a minimum fee of one hundred (\$100.00) dollars covering a period of four (4) consecutive days. The daily fee shall be thirty-seven and one-half (\$37.50) dollars if there are sixteen (16) or more employees, with a minimum fee of one hundred fifty (\$150.00) dollars covering a period of four (4) consecutive days.

d. Any person or business entity meeting the definition of transient professional services shall first pay to the City a daily fee based on the number of employees working in the City. The daily fee shall be twelve and one-half (\$12.50) dollars if there are three (3) employees or less, with a minimum fee of fifty (\$50.00) dollars covering a period of four (4) consecutive days. The daily fee shall be twenty-five (\$25.00) dollars if there are four (4) or more employees, with a minimum fee of one hundred (\$100.00) dollars covering a period of four (4) consecutive days.

18-3.04 Transient Special Regulations; Special Event Permit Fee.

The permit fees set forth in this Section shall be payable in advance to the City and shall be in addition to any transient permit fee or business registration and any occupational license fees that any person or business may already possess.

a. Any person or business entity engaging in the business of promoting, operating or otherwise conducting a flea market, trade show or any business by any other name which is conducted by leasing, renting or providing the use of booths or other spaces to two (2) or more individuals on a day-to-day basis shall be required to pay a permit fee of one (\$1.00) dollar per booth or space per day, with a minimum fee of two (\$2.00) dollars per booth or space covering a period of two (2) days.

b. Any person or business entity required herein to pay a permit fee to the City shall prior to engaging in such activity be required to place a deposit with the City in an amount equal to the number of booths or spaces available to be rented, leased or otherwise provided, multiplied by the permit fee of one (\$1.00) dollar per lessee per day for a thirty (30) day period.

c. The event fee deposit shall be forfeited in full, unless within ten (10) days following the scheduled date of the event or the end of the thirty (30) day period, if applicable, the permittee requests and applies for a reconciliation of the actual permit fee due the City, in which case the amount of additional fees or the amount of refund due shall be determined and paid.

d. Any person or business entity engaging in the business of promoting, operating or otherwise conducting an antique mall or consignment shop shall pay a yearly license fee of sixty (\$60.00) dollars which shall authorize the activity of individuals utilizing booths or spaces in these businesses. This annual fee shall be for the period January 1 to December 31 of the following year. Any new applications for a period less than twelve (12) months shall be prorated at the rate of five (\$5.00) dollars per month for the remaining months of the annual license

18-3.05 Late Charge; Duplicate Permit or Permit Sign; Renewals.

a. Failure to purchase the permit required hereinabove prior to engaging in business in

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the City shall in addition to the penalties hereinafter set forth, subject the representative to a late charge not to exceed one-half ($\frac{1}{2}$) of the calculated fee due.

b. Any person whose permit or permit sign has been lost, stolen or destroyed shall apply to the City's Office of Occupational License for a duplicate permit or permit sign. The fee for issuance of a duplicate permit or permit sign shall be five dollars (\$5.00).

c. Permits may be renewed upon expiration in accordance with this Subchapter.

18-3.06 Activity on City-Owned Property Restricted.

It shall be unlawful for any peddler or representative thereof to exhibit or expose any goods for sale, purchase or exchange, or place any bulletin boards, bicycle stands or any signs in or on any rights-of-way, sidewalks, pavements, parks, playgrounds or any other property owned, maintained, possessed or operated by the City; provided however, nothing in this Subchapter shall prohibit the sale of goods on sidewalks, rights-of-way, pavements, parks or other such property with the written consent of the City.

18-4 ESTABLISHMENTS WHERE LIVE ENTERTAINERS CONTRACTED.

18-4.01 Entertainment License Fee Required.

a. Businesses such as hotels, cafes, restaurants, theaters, clubs or any place which furnish or make provisions for regular or routine entertainment to the public or to its patrons shall pay an annual entertainment license fee of two hundred forty (\$240.00) dollars which shall authorize the activity of entertainers which are contracted to perform. Such entertainers shall include, but not be limited to bands, musicians, disk jockeys, comedians, actors, magicians and other such persons. This annual entertainment license fee shall be for the period of January 1 to December 31 of the following year. Any new applications for a period less than twelve (12) months shall be prorated at the rate of twenty (\$20.00) dollars per month for the remaining months of the annual entertainment license.

b. The entertainment license fee shall be in addition to the business registration and

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occupational license fees set forth hereinabove and shall be payable in advance to the City.

18-4.02 Work Permit Card Required.

Each dancer performing at establishments holding an alcohol beverage control license and governed by the provisions of Chapter 4 (Alcoholic Beverage Control) of the City's Code of Ordinances who is either an employee or contract labor shall make application for a work permit card to the City's Office of Occupational License before conducting such business in the City. The work permit card fee shall be a one-time fee of one hundred (\$100.00) dollars and shall be issued subject to the provisions set forth in Chapter 24 (Sexually Explicit Business License Regulations) of the City's Code of Ordinances. Any request for a replacement work permit card shall be subject to a fee of twenty-five (\$25.00) dollars. Such dancers working as contract labor shall be exempt from the other provisions as set forth in this Chapter.

18-5 INSURANCE PREMIUM TAX.

18-5.01 Insurance Premium Tax Imposed.

a. There is hereby imposed on each insurance company an insurance premium tax for the privilege of engaging in the business of insurance within the corporate limits of the City as set out hereinbelow of premiums actually collected in the corporate limits of Bowling Green on those classes of business which such company is authorized to transact, less all premiums returned to policyholders, but in no event shall this tax be less than five (\$5.00) dollars per quarter; provided however, with regard to life insurance policies, the insurance premium tax shall be based on first year's premiums actually collected within the corporate limits of Bowling Green. The insurance premium 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, and shall not include premiums received on policies of group health insurance provided for State employees.

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- b. The insurance premium tax imposed by hereinabove shall be as follows:

<u>Category of Risk</u>	<u>Rate</u>
(a) Life	2% (of first year's premiums only)
(b) Health	2%
(c) Accident	2%
(d) Burial	2%
(e) Casualty	2%
(f) Automobile	2%
(g) Inland Marine	7%
(h) Fire and Allied Perils	7%
(i) All other Risks	7%
(j) Multiple Line Policies with indivisible premium	5.5%

c. All insurance premium taxes imposed by this Subchapter, including the minimum quarterly tax of five (\$5.00) dollars shall be due no later than thirty (30) days after the end of each calendar quarter. Insurance premium taxes which are not paid on or before the due date shall bear the interest rate as defined in KRS 131.010(6). The minimum tax required under this Subchapter shall be a credit on the insurance premium tax due that quarter.

d. Every insurance company subject to the insurance premium tax imposed by this Subchapter, including any insurance company required to pay only the minimum tax, shall on or before March 31 of each calendar year furnish to the City an annual report in writing in affidavit form, therein setting forth the amount of premiums collected from policies insuring risks within the City from the following types of insurance: 1) casualty; 2) automobile; 3) inland marine; 4) fire and allied perils; 5) health; and 6) life.

e. All collections made from the tax imposed upon and related to inland marine, fire and allied perils, all other risks, and multiple line policies with indivisible premium shall be credited to a special reserve fund within the City's general accounting system entitled, "Fire Improvement Fund."

1. All disbursements, withdrawals and debits from the special reserve fund herein created shall be restricted to the purchase of apparatus, vehicles, equipment, tools, personal protective gear, safety items and any other necessary capital expenditures, as well as for the construction, maintenance and furnishings of facilities and buildings for the Fire Department, and related debt service on financing of the above items; provided, however, the Board of Commissioners may authorize by Municipal Order expenditures from the fund for other City purposes.

2. No transfers to other funds shall be made from the special reserve fund without the approval of the Board of Commissioners.

18-5.02 Penalties.

Penalties for the violation of this Subchapter shall be those penalties established in the Kentucky Revised Statutes (KRS) 91A.080.

18-6 TRANSIENT ROOM TAX.

18-6.01 Transient Room Tax Imposed.

a. A transient room tax of three (3%) percent is hereby imposed and levied on the rate, rent or other charge for the occupancy of a suite, room or rooms, let or rented by any and all persons, firms or organizations engaging in the activity of motor courts, motels, hotels, inns or other like or similar overnight accommodations regardless of the period of stay at the subject establishment. Transient room taxes shall not apply to the rental or leasing of an apartment building supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more.

b. In addition to the above three (3%) percent, effective January 1, 1994, a special transient room tax of one (1%) percent is hereby imposed and levied on the rate, rent or other charge for the occupancy of a suite, room or rooms, let or rented by any and all persons, firms or organizations.

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engaging in the activity of motor courts, motels, hotels, inns or other like or similar overnight accommodations regardless of the period of stay at the subject establishment. This additional special one (1%) percent transient room tax is levied for the sole purpose of meeting the operating expenses of the Convention Center of Bowling Green/Warren County.

c. All persons, firms, organizations or businesses engaging in the activity of motor courts, motels, hotels, inns or other like or similar overnight accommodations shall collect and pay the transient room tax and the special transient room tax to the City of Bowling Green monthly and at the time shall file a return on a form provided for such purpose. Regardless of whether the City has entered into an agreement with a third party online rental company renting or leasing property subject to this Subchapter to collect the transient room tax, all persons, firms, organizations or businesses subject to this Subchapter shall remain liable for filing the appropriate return and paying any transient room tax not collected or paid by the third party online rental company.

d. The Chief Financial Officer for the City and/or his duly authorized agents are hereby empowered to examine the books, papers and records of any person, firm, organization or other like or similar accommodation business required herein to file a return. The examination shall be permitted in order to determine the accuracy of any return made, or if no return was made, to determine the amount of room tax due and owing. The Chief Financial Officer is further authorized to develop policies and procedures relating to the disbursement of the amounts set forth in this Section.

e. Any transient room tax or special transient room tax imposed by this Subchapter remaining unpaid after it becomes due shall bear interest at the rate of twelve (12%) percent per annum simple interest, and the person from whom the transient room tax or special transient room tax is due shall further be charged a penalty of five (5%) percent of the tax due for each calendar month or fraction thereof. The total penalty shall not exceed twenty-five percent (25%) of the total tax due; however the penalty shall not be less than twenty-five (\$25.00) dollars. In addition, any person who shall fail, neglect

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or refuse to properly complete and file a return as required herein or pay the tax imposed herein, or any portion thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or imprisonment of not more than thirty (30) days, or both fine and imprisonment. Each day of any violation shall constitute a separate offense.

18-6.02 Allocation for Special Tourism Projects.

a. All of the three (3%) percent transient room taxes received from the operation of the hotel located adjacent to the Convention Center of Bowling Green/Warren County (currently the Holiday Inn University Plaza) shall be allocated to the Bowling Green Area Convention and Visitors Bureau for nonprofit, tourism-related special projects in Bowling Green and Warren County that are projected to increase overnight stays at Bowling Green and Warren County hotels, motels and related facilities. All of the three (3%) percent transient room taxes received from the operation of the hotel located adjacent to the Convention Center of Bowling Green/Warren County shall be placed in a special project account and shall not be a part of the general operating budget of the Bowling Green Area Convention and Visitors Bureau. All nonprofit, tourism-related special projects receiving funding from this account shall be recommended by the Bowling Green Area Convention and Visitors Bureau and approved by the Board of Commissioners of the City of Bowling Green and Warren County Fiscal Court.

b. All of the three (3%) percent transient room tax not allocated or disbursed by the Chief Financial Officer as approved by the Board of Commissioners, upon the advice and consent of the Bureau, relating to this Section which is collected by the City of Bowling Green shall be paid out to the Bowling Green Area Convention and Visitors Bureau within thirty (30) days after the end of each month. Late payments collected by the City of Bowling Green shall be paid out within fifteen (15) days after receipt. Any legal fees and costs and any audit fees and costs incurred in the administration of this tax or in the collection of delinquent accounts shall be paid by the Bowling Green Area Convention and

Visitors Bureau. Accordingly, the Bowling Green Area Convention and Visitors Bureau may commence and prosecute collection actions on delinquent accounts in its own name in civil and bankruptcy courts through attorneys, auditors and accountants retained by it. All receipts, payments and control utilized by the City relating to the collection of the room tax and special room tax shall be included in the annual audit for the City as prescribed by State law.

18-7 GENERAL PROVISIONS.

18-7.01 Enforcing Officer, Powers and Duties; Refunds.

a. The Chief Financial Officer is hereby charged with the enforcement of the provisions of this Chapter and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of this Chapter, including but not limited to provisions for the reexamination and correction of returns to which an underpayment or overpayment is claimed or found to have been made, and the rules and regulations as promulgated by him shall be binding upon the licensee and employers. All such rules and regulations shall be subject to the consent and approval of the City Manager.

b. The Chief Financial Officer, or any agent or employee designated by him in writing, may examine the books, papers and records of any person or business subject to the provisions of this Chapter in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of occupational license fees imposed by the terms of this Chapter. Each such person or business is hereby directed and required to give to the Chief Financial Officer or his duly authorized agent or employee the means, facilities and opportunity for such examination and investigation as are hereby authorized. The Chief Financial Officer may enforce this right by application to the appropriate court having jurisdiction over these matters.

c. City Business License Inspectors, as designated by the Chief Financial Officer and City Manager, shall have the authority to conduct on-site inspections and to obtain a list of subcontractors

to determine compliance with this Chapter. Any business or business entity receiving tax incentives from the City, including but not limited to the Job Development Incentive Program, that refuse to allow City Business License Inspectors access to conduct on-site inspections and/or to provide a list of subcontractors may be subject to suspensions or terminations of such tax incentives as determined by the Board of Commissioners.

d. The Chief Financial Officer, or designee, in consultation with the City Attorney, shall have the authority to resolve occupational license fee controversies to the extent of waiving penalty or interest, or both, in whole or in part, where it is shown to the satisfaction of the Chief Financial Officer, or designee, that failure to file or pay timely is due to reasonable cause and not willful neglect. In exercising such authority, the Chief Financial Officer, or designee, will consider the facts and circumstances of each particular matter and the hazards and costs of litigation. The Chief Financial Officer has no authority to waive any tax due.

1. "Reasonable cause" exists if the taxpayer establishes to the satisfaction of the Chief Financial Officer, or designee, that either there were significant mitigating factors for the failure or the failure arose as a result of an event, happening or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return and in the payment of the fee or tax due.

2. In addition to establishing that an event beyond the taxpayer's knowledge or control caused the failure to file or pay timely, the taxpayer must also establish that the taxpayer acted in a responsible manner both before and after the failure occurred. The taxpayer must demonstrate that the taxpayer undertook appropriate steps to avoid or mitigate the failure and that the taxpayer rectified the failure as promptly as possible once the impediment to compliance was removed or the failure discovered.

3. Events which will not generally be considered as establishing reasonable cause

include, but are not limited to the following:

i. Actions of agent or employee. The filing of a tax return and the payment of fees or taxes due are both personal, non-delegable duties of the taxpayer. Reasonable cause is not established by merely showing that the taxpayer relied upon an employee, accountant, attorney, payroll service or other person, who failed to file the return or pay the fee or tax.

ii. Ignorance of the Law. Neither ignorance of the law, nor ignorance of the necessity of filing a return or paying the fee or tax is sufficient in and of itself to relieve the taxpayer from liability for penalty or interest.

iii. No tax forms. Failure to receive or obtain tax forms.

4. If the taxpayer disagrees with the decision of the Chief Financial Officer, or designee, the taxpayer may file an appeal in writing addressed to the City Manager within twenty (20) days following the date of the Chief Financial Officer's, or designee's, decision. The City Manager shall review the record and the basis for the Chief Financial Officer's, or designee's, decision, and may meet with the taxpayer. The decision of the City Manager shall be final.

e. The Chief Financial Officer is authorized, with the assistance of the City Attorney, to file any and all necessary actions in the appropriate Court of competent jurisdiction to collect any fee, interest, penalty or any other charge related thereto, or necessary, including court costs and a reasonable attorney's fees to enforce any provision of this Chapter. In addition to the recovery of fees, interest and penalties, the Chief Financial Officer and City Attorney are authorized to seek injunctive or other extraordinary relief to require the delinquent person, business or business entity to cease and desist from operating or conducting in any respect its business activities in the City until all delinquent accounts have been filed and fully paid. The Chief Financial Officer is granted authority to use his best judgment and discretion in bringing such claims for past due occupational license fees or taxes and the Chief Financial Officer is authorized to bring such actions in the name of the City of Bowling Green, Kentucky.

f. Where there has been a claimed overpayment of taxes or fees pursuant to this Chapter, unless otherwise proscribed, a refund or credit shall be made to the extent of overpayment only if a written application for refund or credit is received by the Office of Occupational License within two (2) years from the date the claimed overpayment was made. The authority to refund or credit overpayments of fees and taxes collected pursuant to this Chapter is vested exclusively in the City.

18-8 INFORMATION TO REMAIN CONFIDENTIAL.

18-8.01 Authorization Required.

a. No present or former employee of the City shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the fee or 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 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's tax law or in any action challenging a tax district's tax laws.

b. The City reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his duly authorized agent all such information and rights to inspect any of the books and records of the City if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the City the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the City may publish statistics based on such information in such a manner as not to reveal

data respecting net profits or compensation of any person or business entity.

18-8.02 Reciprocity Agreements to be Executed.

The City is empowered to execute similar reciprocity agreements as described in this Chapter with any other taxing entity should there be a need for exchange of information in order to effect diligent enforcement of this Chapter.

18-8.03 Penalties.

a. Any person violating the provisions of this Chapter by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred (\$500) dollars or imprisoned for not longer than six (6) months, or both.

b. Any person violating the provisions of this Chapter by divulging confidential taxpayer information shall be fined not more than one thousand (\$1,000) dollars or imprisoned for not more than one (1) year, or both.

18-9 RESPONSIBILITIES OF OFFICERS.

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

18-10 INJUNCTIVE RELIEF.

In the event any person, business, business entity, firm, corporation, partnership or other entity fails or refuses for any reason to pay when due any tax or fee imposed or required by this Chapter, the City of Bowling Green, may upon application to a court of competent jurisdiction, seek injunctive or other extraordinary relief to require said person, firm, corporation, partnership or other entity to cease and desist from operating or conducting in any respect within the corporate limits of the City the business enterprise for which the tax or fee is due, until such time as said tax or fee, plus appropriate penalties and interest, have been paid in full. Should the City be required to pursue such extraordinary relief, the person, firm, corporation, partnership or other entity liable for payment of said tax or fee shall be liable for all court costs incurred by the City, and under appropriate circumstances, reasonable attorney's fees.

18-11 PENALTIES.

Where no penalty provisions are stated hereinabove, fees remaining unpaid after they become due shall bear interest at the rate of twelve (12%) percent per annum simple interest and shall be subject to a five (5%) percent penalty of the amount of such unpaid fees. The total penalty shall not exceed twenty-five (25%) percent of the total fees due; however, the penalty shall not be less than twenty-five (\$25.00) dollars. In addition, unless otherwise provided hereinabove, any person or business who fails to comply with the provisions of this Chapter in making the appropriate application, filing the required return, paying the appropriate fees or taxes, or refusing to permit the Chief Financial Officer or his designee to examine its books, records, papers, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatsoever to avoid complying with this Chapter shall upon conviction be guilty of a misdemeanor and shall be subject for each offense to a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars, or imprisonment for not more than thirty (30) days or both. Each day of any violation of this Chapter shall constitute a separate offense.

(Ordinance No. BG2020 - 23)

2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on August 18, 2020, and given final reading on September 1, 2020, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: September 1, 2020

APPROVED: Brian Wilkerson
Mayor, Chairman of Board of Commissioners .

ATTEST: Ashley Jackson
City Clerk

SPONSORED BY: Jeffery B. Meisel, City Manager