

CITY OF LYNDON
ORDINANCE NO. 7-24-23
AN ORDINANCE ENACTING NEW SECTIONS IN CHAPTER 110
OF THE CODE OF ORDINANCES RELATING TO
BUSINESS LICENSING AND OCCUPATIONAL TAXATION

WHEREAS, the governmental services provided to the community by the City of Lyndon has greatly expanded in recent years, including the ground up creation of a police department that is able to provide police protection to city residents and businesses 24 hours, every day of the year,

WHEREAS, the City Council also finds that the cost of providing all the other governmental services provided by the City of Lyndon has greatly increased for street lighting and garbage collection, public works services, such as re-paving streets and maintenance of city owned properties and parks,

WHEREAS, the City Council has determined that significant revenue must be raised to continue the level of governmental services currently being provided by the city and the only revenue source to raise the income needed is through the imposition of an occupational license tax,

AND WHEREAS, the City Council finds that a reasonable occupational tax will not unduly burden the business community, which also benefits from the police protection and public works services provided by the City of Lyndon,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LYNDON, KENTUCKY:

SECTION 1: The City of Lyndon does hereby adopt new sections in Chapter 110 of its codified ordinances as follows:

OCCUPATIONAL LICENSE FEE

110.10 SHORT TITLE.

This subchapter may be referred to as the Lyndon Occupational License Fee Ordinance.

110.11 DEFINITIONS.

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

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

"CITY." The City of Lyndon, Kentucky.

"COLLECTOR." The person designated by the city as the license fee collector and administrator under this subchapter.

"COMMISSION MERCHANT" or "COMMISSION EMPLOYEE." Any person who engages in the sale of goods for compensation in the form of a commission only. Also, any person who buys and resells goods, if the person does not maintain a retail store or wholesale sales floor and does not store goods except during short periods before transportation to the buyer.

"COMPENSATION." The compensation paid by any employer, regardless of whether the employer is a for-profit or a non-profit entity, to any employee, including wages, salaries, commissions, bonuses, and all other kinds of employee compensation whatsoever.

"COMPENSATION" also includes commission received by a commission merchant or commission employee. "COMPENSATION" as herein defined does not include fringe benefits paid for by an employer.

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

"EMPLOYEE." Any person engaging in or following any trade, occupation, profession, or activity as defined herein and receiving compensation consisting of either wages, salary, commission, or other forms of compensation. The substance and not the form shall govern, and no employee working under the supervision of another person shall be considered to be an independent contractor merely because a contract has been signed making it appear that the employee is an independent contractor.

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

"EMPLOYER" shall also mean the person or entity liable for the withholding of occupational license fees from the compensation of an employee.

"FIRM." Any sole proprietorship, partnership, corporation, joint venture, limited partnership, or other form of organization formed for the purpose of doing business.

"INDIVIDUAL." A natural person.

"LICENSEE." Any person required to pay a license fee under this subchapter.

"OCCUPATION, TRADE, PROFESSION, OR OTHER ACTIVITY." The doing of any kind of work, the rendering of any kind of personal service, the holding of any kind of position or job within the city, by any clerk, laborer, tradesman, manager, official, or other employee, 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 the 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 the official or employee are rendered within the city.

"PERSON." Any natural person, co-partnership, fiduciary, association, or corporation. Whenever 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.

"RESIDENT." Any natural person, co-partnership, fiduciary, association, corporation, or other entity domiciled or having a business situs in the city.

"SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATIONS" or "WAGES." The total gross amount of all salaries, wages, commissions, bonuses, shares of net partnership receipts or withdrawals, corporate dividends paid in lieu of salaries or wages, which are required to be reported for federal income tax purposes, and any and all other payments or other considerations which a person receives from, or is entitled to, for any work done or personal services rendered within the city in any trade, occupation, or profession, or any other activity, including all deductions whether for tax, insurance, or other, but excluding fringe benefits paid for by an employer. Amounts paid to traveling salesmen or other workers as allowance or reimbursement for travel or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to his employer, are excluded.

"SALES WITHIN THE CITY." Sales of merchandise delivered to a customer within the city, or services performed within the city for a customer.

"TREASURER." The treasurer of the City of Lyndon, Kentucky.

110.12 APPLICABILITY.

(A) The occupational license fee shall apply only to employees of persons, firms, corporations, and associations doing business within the boundaries of the city.

(B) A person, firm, corporation, or association is doing business within the boundaries of the city if the entity does any of the following:

- (1) Employs one or more employees, commission merchants, or commission employees to work in the city.
- (2) Maintains a place of business within the city.
- (3) Owns, manages, or leases property in the city. Managing rental property owned by the entity or by others is included.

110.13 BUSINESS OR OCCUPATION REQUIRED TO PAY AMOUNT OF TAX.

Each person, firm, organization, or corporation owning, operating, conducting, or

engaging in any business, occupation, trade, or profession, as defined in Section 110.12, whether operated or conducted separately or in connection with another business, occupation, trade, or profession shall pay the required license fee. The person designated by the city as the license fee collector and administrator is charged with the enforcement of these provisions and shall have all the powers, duties and authority set out in this chapter.

110.14 OCCUPATIONAL LICENSE FEES IMPOSED.

There is a levied and imposed annual occupational license fee upon all persons engaged in any occupation, trade, profession, or business in the city, for the privilege of engaging in the occupation, trade, profession, or business. The occupational license fee shall be measured by and be equal to 1% of the gross annual salaries, wages, or compensations earned by any such persons for work done or services performed or rendered within the city in the 12 months next preceding the return to be filed as required in this Chapter.

110.15 APPORTIONMENT OF OCCUPATIONAL LICENSE FEES.

Where salaries, wages, commissions, and other compensations are earned for work performed or services rendered both within and without the city, occupational license fees shall be measured by such part of the salaries, wages, commissions, and other compensations as is earned as a result of work performed or services rendered in the city. Such occupational license fees shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the city bears to the total compensation earned, in accordance with KRS 67.753.

110.16 SPECIFIC RECEIPTS EXCLUDED FROM OCCUPATIONAL LICENSE FEE.

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

- (A) Old age or retirement payments. Periodic payments commonly recognized as old age or retirement pensions, made to persons retired from service after reaching a specific age or a stated period of employment, are not subject to the license fee.
- (B) Disability, sickness, and accident benefits, unemployment compensation, and other insurance payment received from personal injuries or property losses. Payments to employees by an employer under disability, sickness, and accident benefit plan are not subject to the license fee. Unemployment compensation payments by the Commonwealth of Kentucky, or any other agent, are not subject to the occupational license fee. Payments received for personal injuries and property losses are not subject to the occupational license fee.
- (C) Death benefits. Death benefits payable to the beneficiary of an employee or to their estate, whether payable in a single sum or otherwise, are not subject to the occupational license fee.
- (D) Worker's compensation benefits. Benefits arising under the Worker's Compensation Act as compensation for disabilities sustained during the course of employment, together with any amount of damages received by suit or agreement, on account of such disability are not subject to the occupational license fee.

(E) Any income exempt from occupational taxation by state or federal law.

110.17 EMPLOYER LOCATED OUTSIDE CITY.

Employers located outside of the city are subject to withholding of occupational license fees on the salaries, wages, commissions, and other compensation of employees where the employer is doing business in the city as defined in Section 110.12.

110.18 COLLECTOR DESIGNATED.

(A) The collector is charged with the enforcement of these provisions, and is empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of these provisions, 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. The rules and regulations as promulgated by the collector shall be binding upon the licensee and employers. However, all such rules, regulations, and decisions shall be subject to the consent and approval of the City of Lyndon Council.

(B) The collector, or any agent or employee designated by the collector in writing, may examine the books, papers, and records of any employee or supposed employee of any licensee or supposed licensee in order to determine the accuracy of any return made, or, if no return was made, to ascertain and assess the amount of occupational license fee imposed by the terms of this subchapter, as the collector may deem this reasonably necessary for purposes incident to the performance of the collector's duties hereunder. The collector may enforce this right by application to the appropriate court having jurisdiction over these matters.

110.19 OCCUPATIONAL LICENSE FEE REPORTING; WITHHOLDING.

(A) Each employer who employs one or more persons within the city shall obtain from the city an occupational license fee reporting number.

(B) Each employer who employs one or more persons within the city shall deduct monthly, or more often than monthly, at the time of payment thereof, the occupational license fee due from each employee measured by the amount of salaries, wages, commissions, or compensation due by the employer to the employee subject to the occupational license fee and shall pay to the treasurer the amount of occupational license fee so deducted. The payment required to be made on account of deductions by employers shall be made quarterly to the city treasurer for the quarterly periods ending on the last day of March, June, September, and December of each year, on or before the last day of the month next following the quarter of the deduction and employers shall file with the city an Employer's Quarterly Return of License Fee Withheld. However, the collector may, by regulation, require employers to make returns and to remit the occupational license fees withheld more frequently.

(C) Each employer who employs one or more persons within the city shall annually file by the last day in February each year an Annual Report of Employee's Payroll Withholding form to the collector, in which return is set forth the name and residence of each employee of the employer, employed during the preceding calendar year, his or her social security number (or other federal identification number), setting forth the total amount of salaries, wages,

commissions, or other compensations earned during the preceding calendar year by each employee and the amount thereof earned within the city and subject to the occupational license fee imposed by this subchapter. It shall be the duty of each employer who has deducted the occupational license fee from the wages, salaries, commission, or other compensation referred to above, to furnish the employee a statement showing the amount of salary earned and occupational license fee deducted and paid by the employer during the preceding calendar year, on or before the last day of January of each year. However, the failure or omission of any employer to deduct the occupational license fee shall not relieve the employee from the payment of the occupational license fee and compliance with such regulations with respect to making returns and payments thereof, as may be fixed in this subchapter and compliance with such regulation with respect to making returns and payments thereof, as may be fixed in this subchapter or established by the collector.

(D) An employer who deducts and withholds the city occupational license fee from one or more persons under employ and who fails to file a return and make payment therewith shall in addition to the penalties prescribed herein upon conviction be subject to a fine of not less than \$100 nor more than \$500, or imprisonment for not more than 30 days, or both fine and imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed above.

(E) The Collector shall have the authority to extend the time of filing the occupational license fee return. Extension shall be upon the written request of the licensee and shall be received by the collector prior to the due date of the occupational license fee return. The written request shall be accompanied by a copy of the appropriate state or federal applications for extension. Regardless of the number of extensions approved, all occupational license fees remaining unpaid after they become due shall bear interest at the rate of 1.5% per month (or part thereof) until paid. All occupational license fees remaining unpaid for 30 days after the original due date, or approved extension date, whichever shall be later, shall be subject to a 10% penalty of the amount of such unpaid occupational license fees, or \$10, whichever shall be greater.

(F) Each person filing a return shall provide a copy of Form Schedule C, 1040 (Profit or Loss from Business or Profession); Form Schedule E, 1040 (Supplemental Income from Rents, etc.); Form 765 or 1065 (partnerships); Form 741 or 1041 (Fiduciary/Estate-Trusts); Form 720 or 1120 (Corporations), as applicable.

110.20 COLLECTION OF LICENSE FEES; RECORDS.

(A) It shall be the duty of the collector to collect and the treasurer to receive the occupational license fees imposed by this subchapter.

(B) The treasurer shall give a receipt to the collector for such fees and shall keep records showing the amount paid by each licensee and employer and the date of such receipt.

110.21 PURPOSE; FEES TO BE DEPOSITED IN GENERAL FUND.

(A) All moneys derived from occupational license fees under the provisions of this subchapter shall be paid to the city treasurer and placed to the credit of the general revenue fund of the city. The revenue therefrom shall be used and expended in defraying current, general, and incidental expenses of the city and for capital improvements.

(B) It is the purpose of this subchapter to provide revenue for the general fund of the city and it is not the intention of the city or of this subchapter to impose and require any occupational license fee prohibited by law. Pursuant to KRS 92.330, the city has enacted the business license and occupational fee ordinances for the purpose of funding government services that are essential to the successful operation of commercial enterprise in the city; including, but not limited to, police protection, sanitation, public works, and the maintenance and capital improvement of the public infrastructure, which is used daily by the business community and its patrons.

110.22 INFORMATION DEEMED CONFIDENTIAL: PENALTY FOR DISCLOSURE.

(A) Any information, including returns, documents, or payments made pursuant hereto, and any other information gained by the treasurer, collector, or any other official, agent, or employee of the city as a result of any return, investigation, hearing, or verification required or authorized by this subchapter shall be confidential except in accordance with proper judicial order. Any person or agent divulging such information shall, upon conviction, be subjected to a fine of not less than \$50 nor more than \$200, or imprisonment not to exceed 60 days, or both, at the discretion of the court, and, upon conviction, shall be dismissed from employment by the city.

(B) However, such person may disclose to the commissioner of revenue of the state, or their duly authorized agent, or to the Commissioner of the Internal Revenue Service, or their duly authorized agent, all such information, and extend the right to inspect any of the books and records of the city to the commissioner of revenue of the state and to the Commissioner of the Internal Revenue Service, who must grant to the city the reciprocal right to obtain information from the files and records of the department of revenue of the state and from the files and records of the Internal Revenue Service; and maintains the privilege character of the information so furnished to them.

110.23 COLLECTOR'S DUTIES.

The collector shall have the following duties in connection with the occupational license tax.

(A) Keep accurate records of all returns and of all sums received for occupational license taxes. Such records shall contain the names and addresses of each taxpayer, and the dates and amounts of payments. The nature of installment payments shall be indicated in the records. The collector shall keep the original returns on file for a period of not less than three years after filing.

(B) Enforce the provisions of this subchapter, all in accordance with any policies set forth in any ordinance, municipal order, or executive order.

(C) Prepare forms and instructions for the returns and payments required by this subchapter. All instructions shall be clear and shall be as short as possible.

(D) Examine returns and, for any returns appearing to be incorrect, make inquiries, investigations, and adjustments in the amount of tax due.

(E) Where necessary to determine accurate figures for determining the amount of tax due, examine books, records, and information stored in computers of any taxpayer, provided that each city officer or employee acting under this provision shall identify themselves and request the information desired. If the officer or employee is refused admission to any place of business

or refused access to any records or computer memory, the collector or employee shall leave the premises and shall seek an appropriate court order, with the assistance of the city attorney, to obtain access to the information needed.

(F) The collector may delegate duties assigned to the collector in this subchapter to any officer or employee under collector's supervision, provided that the collector shall approve the form of all returns and written instructions.

(G) The collector shall prepare pamphlets for distribution to the public, clearly explaining the occupational license tax and the returns and payments required.

(H) The collector shall perform all of the other duties assigned to the collector by this subchapter.

110.24 PROCEDURE FOR APPLYING FOR REFUND OF OVERPAYMENT.

(A) Any person, employer, employee, licensee who truly believes that they have made or permitted an overpayment of their liability for any occupational license fee required by this subchapter may apply for refund of the overpayment provided that they file an amended return, verified under oath and setting forth in detail the full explanation of the reason of the claimed overpayment of their liability, within one year of the date the overpayment is made or the date the occupational license fee payment was due, whichever occurs first.

(B) If a refund has been properly claimed according to the provisions of division (A) above, then the collector shall have the authority to honor and refund any overpayment actually made above actual liability upon the occupational license fee required under this subchapter which the collector determines within the collector's sole discretion was made through honest mistake or inadvertence.

(C) In no event shall any refund be made for any payment upon any occupational license fee unless the refund claim is submitted and filed in strict compliance with the foregoing provisions of this section upon such refund claim forms or amended return forms as hereafter be promulgated by the collector from time to time.

110.25 FAILURE TO FILE RETURN; FAILURE TO PAY; UNDERPAYMENTS.

The following rules shall apply when an employer fails to file a return, fails to pay the occupational license fees withheld when due, or pays less than the amount due.

(A) If the person (employer) liable for withholding the occupational license fees and filing a return fails to make a return, the collector shall prepare an estimate of the amount of occupational license fees due based on the best information available to the collector. The collector may make investigations to assist in making the estimate. The collector may consider the number of employees, the wages or other compensation customarily paid in the type of business, the volume of business done, and customary commissions or bonuses paid to employees in the same type of business, and any other relevant matters. The collector may estimate the compensation customary in the business or similar businesses. When the collector estimates the occupational license fees, the amount of interest and late charges provided by this subchapter shall be added to the fees due. In addition to all the provisions set out in Chapter 110 herein, the Collector shall also have the discretion to use all the powers for collection, enforcement and all the penalties for failure to file or pay under KRS 67.750-795.

(1) The collector shall notify the person (employer) of the amount due. Notification

shall be in writing and shall contain a brief description of the method and estimated figures used in arriving at the estimated tax.

- (2) Any person (employer) may dispute the amount of the estimated tax by filing within 30 days of notification of the estimated fees, a return accompanied by payment of the entire balance due together with the interest and late charges due. This return shall be processed like any late return, the collector, and shall establish the occupational license fees liability of the person (employer) in place of the estimated amount prepared by the collector. The collector may, however, later determine that the amount shown in the return is insufficient so there is a deficiency, in the same manner as in the case of other returns.

(B) If the collector determines, by examining available evidence, that the amount of occupational license fees paid over by the employer is less than the amount required by this subchapter, the collector shall notify the employer of the deficiency.

(1) The collector may use any of the methods authorized in division (A) of this section to determine whether a deficiency exists and to determine the amount of deficiency.

(2) The collector shall thereupon notify the employer of the deficiency. Notice shall be in writing and shall state not only the amount of the deficiency but also the methods and estimates used in arriving at the amount of the deficiency.

(3) If the employer does not object within 30 days of the date of receiving notice, the employer shall be deemed to have accepted the revised figures for the occupational tax liability. If the employer does file written objection within the time specified, the employer shall pay the fees, together with penalties and interest, under protest and may thereupon pursue administrative and judicial remedies as provided by ordinance and by state law to seek a refund.

(C) If the collector finds that any employer has overpaid, the collector shall notify the employer of the overpayment and shall refund the amount of the overpayment to the employer.

(D) When the collector notifies any employer of any estimated amount due, alleged overpayment, or refund, the collector shall include in the notice clear instructions on how, when, and where the employer may protest or appeal the decision.

(E) If an employer or any person, firm, association, or corporation required by this subchapter to pay a fee or to file a return shall fail to file any return for any year, failure to file shall constitute a continuing offense against the city and the collector may proceed to estimate and collect the occupational license fees at any time. In all other cases, no increases shall be made in the employer's occupational license fee liability unless notice of such increase is received by the employer within three years of the time the annual return was first due.

SECTION 2: The City of Lyndon does hereby repeal and replace Section 110.99 as follows:

110.99 PENALTY.

(A) Whoever violates any of the provisions of Chapter 110, shall be subject to the following penalties:

- (1) All business or occupational license fees which remain unpaid after they become due shall bear interest at the rate of 1.5% per month (or part thereof). Any person who fails to pay the business or occupational license fees when it shall become

due, shall also be charged a penalty of 10% of the amount of the unpaid license fees or \$10, whichever shall be greater.

- (2) Any person who shall fail, neglect, or refuse to make any return required by Chapter 110, or any employer who shall fail to withhold the occupational license fee, or to pay to the city those so withheld thereunder, or any person who shall refuse to permit the collector or any agent or employee designated by the collector in writing, to examine books, records, and papers pertaining to information required thereunder, or who shall knowingly make any incomplete, false, or fraudulent return; fail, neglect or refuse to apply for an occupational license fee reporting number as required by Chapter 110, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of earnings in order to avoid the payment of the whole or any part of the license fee, shall become liable to the city for such fees as well as the interest and penalty thereon, and shall in addition, be subject to citation and upon conviction, shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$100 or more than \$500, or imprisonment for not more than 30 days, or to both fine and imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed above.

SECTION 3: This ordinance shall take effect upon enactment and publication according to law.

First Reading:

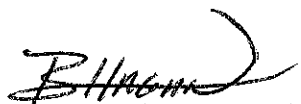
July 24, 2023

Second Reading:

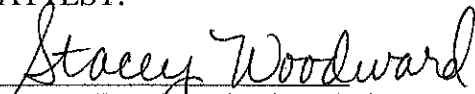
August 28, 2023

Passed and Approved:

August 28, 2023


Brent Hagan, Mayor

ATTEST:


Stacey Woodward, City Clerk

In Favor: 7

Opposed: 0