

## CHAPTER 60. BUSINESS LICENSES

### **Cross-reference:**

*Sexually explicit entertainment*, see Chapter 62

## ARTICLE I. OCCUPATIONAL AND BUSINESS LICENSES

### Division 1. General Provisions

#### § 60.001 DEFINITIONS

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

**"BUSINESS."** Any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. **"BUSINESS"** shall not include the usual activities of 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 funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, income or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.

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

**"CITY."** The City of Berea, Kentucky.

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

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

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

**"CONCLUSION OF THE FEDERAL AUDIT."** The date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable.

**"EMPLOYEE."** Any person who renders services to another person or any business entity for compensation, including an officer of a corporation 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."** The person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

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

(2) In the case of a person paying wages on behalf of a nonresident alien individual, foreign

partnership, or foreign corporation, not engaged in trade or business within the United States, the term "EMPLOYER" means such person.

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

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

"INTERNAL REVENUE CODE." The Internal Revenue Code in effect on December 31, 2003, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2004, that would otherwise terminate.

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

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

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

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

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

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

"PERSON." Every natural person, whether a resident or non-resident 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.

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

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

"TAX DISTRICT." Any city of the first to fifth class with authority to levy net profits, or occupational license taxes.

"TAXABLE NET PROFIT."

(1) In case of a business entity having payroll or sales revenue only within the city means net profit as defined in this section.

(2) In case of a business entity having payroll or sales revenue both within and without the city means net profit as defined in this section, and as apportioned under § 60.101.

"TAXABLE YEAR." The calendar year or fiscal year ending during the calendar year, upon the basis of which net profit is computed.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.002 FINANCE OFFICER TO ENFORCE

(A) *Power to prescribe regulations.* The finance officer is hereby charged with the enforcement of

provisions of this article, and is hereby empowered to prescribe, adopt and promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of the article, 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 him shall be binding upon the licensee and employers. Provided, however, all such rules, regulations and decisions shall be subject to the consent and approval of the mayor.

(B) *Authority to examine finance records.* The finance officer, or any agent or employee designated by the finance officer in writing, may examine the books, papers, and records of any employer, or supposed employer or of any licensee, or supposed licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee imposed by the terms of this article as the finance officer may deem reasonably necessary. The finance officer may enforce this right by application to the appropriate court having jurisdiction over these matters.

(C) *Other duties.* In order to appropriately effect the provisions of this chapter, the finance officer shall:

(1) Provide formal presentation not less than quarterly to the mayor and city council with information on budget performance, revenues, projections, and any other information as requested by the mayor or city council;

(2) Prepare and distribute at the second monthly council meeting of each month, a performance spread sheet as specified by the mayor and city council; and

(3) On an annual basis, provide to the finance committee of the city council, an action plan to secure appropriate revenue collections from license fee payers set out in § 60.102.

(D) *Annual audits.* The finance officer shall, on an annual basis, perform an audit of not less than ten (10%) percent of all license fee payers, to include hotels, motels, and restaurants paying the transient room and restaurant tax imposed by §§ 61.101 through 61.106.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 3.93, 3-2-93; Amd. Ord. No. 15-08, 7-1-08)

## **Division 2. General Business License**

### **§ 60.100 LICENSE FEES**

(A) *Initial business license fee.* Each person, corporation or business engaged in any occupation, trade or profession or other business activity in the city, except those businesses engaged in those activities shown in § 60.101, shall apply for and obtain an occupational license from the city by paying an initial business license fee before the commencement of the business. This fee shall be ten (\$10.00) dollars. Licensees are required to notify the city of any changes in address, the cessation of business, or any other changes which render the information supplied to the city in the license application inaccurate.

(B) *Annual renewal.* All existing general business licenses shall be renewable annually upon the license holder filing the net profits or occupational license return required by § 60.204(G). In the event such return is not filed, the license may be revoked as provided by § 60.213.

(C) *Non-transferable.* A license to operate a business, once granted, shall not be transferable by the applicant.

(D) *Business license fee credit.* The minimum license fees required under this chapter shall be a credit on the net profit license fee imposed by § 60.200 only for the tax year which the minimum fee covers and shall not be a credit for any subsequent or previous years.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 14-03, § 2, 8-19-03; Amd. Ord. No. 15-08, 7-1-08)

### **§ 60.101 OCCUPATIONS REQUIRING SPECIAL REGULATIONS; LICENSE FEES**

(A) *Minimum license fees.* The city council hereby finds the occupations set forth in § 60.102 are of such a nature as to require special regulation and supervision, and therefore minimum license fees are

imposed on every person, corporation, association, occupation, trade, profession, or other activity engaged in business, occupations, calling or profession or using, holding or exhibiting articles named in § 60.102. These businesses shall pay the license fee set forth to the city for each calendar year (or fraction thereof in the case of a new business). Payment of the license fee shall be a credit on the other license fees as provided in this chapter. However, the license fee shall be considered as the minimum fee due for the period set forth in the table and shall be paid in advance of engaging in the activity.

(B) *Single license fee.* In the event that a licensee engages in more than one (1) type of activity in one (1) business entity, the highest minimum license fee shall apply.

(C) *Payment for license fee.* In the case of enterprises not operating continuously, payment must be made prior to the beginning of operations.

(D) *Collection by lessor.* In the event a non-resident person engages in any activity or occupation included in § 60.102 and leases, rents, engages, or otherwise uses premises owned or controlled by another person (the "lessor") for the purpose of carrying on the activity of occupation, then the lessor shall be responsible for obtaining the license applications and collecting the license fees, and shall be entitled to retain twenty-five percent (25%) of all license fees collected in consideration of the collection and bookkeeping expenses incurred. All lessors shall maintain records of each rental to a person subject to the provisions of § 60.102.

(E) *License fee renewal.* In any tax year, it shall be unlawful for any person to continue to engage in any occupation, trade, profession or other activity in the city without first having renewed and paid for the minimum license fee herein required. If the minimum license fee is not renewed between January 1 and February 28 of each year, a penalty of one hundred (\$100.00) dollars per month or fraction thereof shall be imposed commencing on March 1.

(F) *License fee credit.* The minimum license fees required under this chapter shall be a credit on the net profit license fee imposed by § 60.200 only for the tax year for which the fee applies and shall not be a credit for any subsequent or previous years.

(Ord. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.102 SCHEDULE OF SPECIAL LICENSE FEES

##### (A) *Billiard, pool rooms*

(1) A billiard or pool hall shall be a commercial establishment containing two (2) or more billiard or pool tables which are utilized by a customer for a fee.

(2) License fee. \$200 per year

Table fee. \$ 25 per table per year

(3) An application for a billiard room license shall be in the following form and submitted to the city clerk.

"I, \_\_\_\_\_, hereby make an application for licenses to conduct a pool room business in the City of Berea, Kentucky, for and during the year beginning January 1, \_\_\_\_ and ending December 31, \_\_\_\_, or annually thereafter.

"I propose to use (number of tables) in the operation of business, located at (street and number) in Berea, Kentucky.

"In consideration of the City of Berea granting this license, I hereby agree that I will not permit any person under the influence of intoxicating liquor or beverage, or any controlled substance not prescribed by a physician, to loaf or loiter in my place of business or premises; I will not permit the sale or drinking of any intoxicating liquor or beverages, or the consumption of any controlled substance not prescribed by a physician, in my place of business or on my premises.

"I further agree that my place of business or premises may be inspected at any time by any police officer of the City of Berea without a search warrant.

"This application shall be a part of the license contract, and any violation of any of the provisions herein shall be sufficient cause for revocation of my license."

(4) Upon receiving an application for a license to conduct a billiard or pool room, the city shall consider the application. The city may take testimony from persons, including the applicant, who wish to offer evidence concerning the operation of such a business. The city may consider the character of the applicant, the past record of the applicant in operating the same or related businesses, the condition of the premises and the expected effect upon the safety, health and morals of the community at large. The city shall recommend whether the license shall be granted or denied based upon its findings and shall act upon the recommendation.

(5) Once granted, a license to operate a billiard or pool room shall not be transferable by the applicant.

(6) A license for the operation of a billiard or pool room shall be effective for one year beginning on January 1 and expiring on December 31. The city may, during the effective period of a license granted hereunder, revoke the license for good cause. Upon a proper showing, the city may delegate authority to hold a hearing on whether the license should be revoked. At the hearing, the city shall take testimony from interested persons, including the licensee, and may revoke the license upon a finding of any or all of the following:

(a) That the licensee is not complying with any applicable federal, state or local statute or regulation;

(b) That the licensee has, in the operation of the business, violated the criminal law in any manner;

(c) That the operation of the business constitutes a nuisance under the common law or under the statutes of the Commonwealth of Kentucky or the ordinances of the city; or

(d) That the operation of the business is detrimental to the safety, health or morals of the community at large.

(B) *Carnival and circus*

(1) License fee \$300 per week

(2) The license fee shall be assessed against any carnival or circus within the city limits.

(3) Before any license is issued, the applicant shall furnish an affidavit stating that all rides or mechanical devices upon which passengers are carried have been inspected within ninety (90) days of the date of application and found to be safe.

(4) Before any license is issued, the applicant shall furnish proof of insurance covering personal injury to any patron of the carnival in an amount not less than one million (\$1,000,000) dollars per occurrence.

(C) *Collection agency*

License Fee \$ 40.00 per year

(D) *Fortune teller, hypnotist, magnetic or divine healer, phrenologist, faith cure, palmistry or similar occupation accepting payment*

License Fee \$200.00 per day

(E) *Golf course*

License Fee \$100.00 per year

(F) *Insurance company engaging in the sale of life insurance policies*

License Fee \$100.00 per year

(G) *Itinerant contractor, non-residential transient or temporary contract painters, plumbers, plasterers, heating and air conditioning contractors, brick layers, etc.*

License Fee \$ 25.00 per year

(H) *Itinerant merchant*

License Fee \$ 25.00 per year

\$ 10.00 per day

(I) *Laundry*

License Fee \$100.00 per year

(J) *Loan companies involved in note buying, lending money on assignment of salaries, wages due or to become due on chattels, or other notes*

(1) License Fee \$350.00 per year

(2) The license fee established in this subdivision shall not apply to any financial institution which is exempt from city taxation under KRS 92.300(2).

(K) *Pawnbrokers*

(1) Any person within the city who loans money on deposits of personal property or deals in the purchase or possession of personal property on condition of selling the same back to the pledgor or depositor, or who loans or advances money on personal property by taking chattel mortgage security thereon and takes or receives the personal property into his possession, is hereby declared to be a pawnbroker.

(2) License Fee \$250.00 per year

(L) *Peddlers*

(1) License Fee \$ 25.00 per year

\$ 10.00 per day

(2) The license fee provided herein for peddlers may be waived by the mayor, on a written request to the mayor, that an event of charitable, civic, or education significance is occurring and that as a part of the event there will be event-related items and services sold by merchants which are necessary and connected to the event, and upon the mayor's certification of same and that the public interest shall be served by a waiver.

(M) *Non-resident sales and delivery including parcels, mail, money, etc*

(1) License Fee \$ 50.00 per year

(2) Excluded from payment of the license fee under this subsection is the federal post office and its employees.

(3) Any trucks or vehicles exempted by Kentucky Revised Statutes or operated by any farmer for transportation of the products of his farm or land, and/or any licensed business calling or making deliveries to the customers of the licensed business shall be exempt.

(N) *Shooting gallery*

License Fee \$150.00 per year

(O) *Skating rink*

License Fee \$150.00 per year

(P) *Solicitors*

(1) The term solicitor shall be deemed to mean and include any person who goes from house to house or from place to place selling or taking orders for or offering to sell or take orders for books, magazines, cleaning supplies, and the like.

- (2) License Fee \$100.00 per year  
\$ 10.00 per day

(Q) *Vending machines*

(1) The term vending machines shall apply to any lawful coin or token-operated machine or device which contains no element of chance and which as a result of depositing a coin, token or other object automatically by or through some mechanical operation affords music or amusement of some character with or without vending any merchandise, but in addition to any such merchandise. Such coin-operated amusement and vending machine shall not include any bona fide merchandise vending machine in which there is incorporated no amusement features.

- (2) License Fee \$ 10.00 per machine per year

(3) Vending machines operated by a bona fide non-profit organization shall be exempt from this fee.

(Ord. No. 21.90, 10-16-90; Am. Ord. No. 18-97, 9-16-97; Amd. Ord. No. 15-08, 7-1-08 )

### **Division 3. Occupational Licenses**

#### **§ 60.200 OCCUPATIONAL LICENSE TAX PAYMENT REQUIRED**

(A) Except as provided in subsection (B) of this section, 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 of the Kentucky Revenue Cabinet shall be required to file and pay to the city an occupational license tax for the privilege of engaging in such activities within the city. The occupational license tax shall be measured by two percent (2%) of:

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

(2) The net profit from business conducted in the city by a resident or nonresident business entity.

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

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

(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. License whose business are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profit derived from the non-public service activities apportioned to the city;

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

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

(7) Pension, interest, and dividend income. Income from pensions, interest and dividends is not subject to this occupational license fee, within the meaning of this chapter;

(8) Domestic servants. No license fee under this chapter shall be required of domestic servants employed in private homes;

(9) Fiduciary. A fiduciary who holds in trust property, monies or properties to which another has a beneficial interest, or who receives or controls income from another person is not subject to the license fee imposed by this chapter, except where the fiduciary operates a business which is subject to a license fee for doing business within the city. The remainder of the trust is hereby exempt from any payment or annual occupational fees;

(10) Limited rental income. Income derived from rental of one (1) apartment or one (1) house only shall be exempt from the license fee;

(11) Old age or retirement payment. Periodic payments, commonly recognized as old age or retirement pensions, made to persons retired from service after reaching a specified age or a stated period of employment are not subject to the license fee;

(12) Disability and unemployment. Disability, sickness and accident benefits and unemployment compensation, and other insurance payments received for personal injuries or property losses are not subject to the license fee. Payments by an employer to employees 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 license fee. Payments received for personal injuries and property losses are not subject to the license fee;

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

(14) 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 liability are not subject to the license fee;

(15) Employee contributions to qualified retirement plans. Employee contributions to retirement plans which are properly qualified and approved by the United States Internal Revenue Service.

(Ord. No. 21.90, 10-16-90; Amd. Ord. 14.91, § 1, 6-4-91; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.201 APPORTIONMENT

(A) Except as provided in subsection (D) of this section, net profit 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 (B) of this section, plus the sales factor, described in subsection (C) 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 (C) of this section.

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

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

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

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

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

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

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

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

(1) Separate accounting;

(2) The exclusion of any one (1) or more of the factors;

(3) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the city; or

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

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

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

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

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

(Ord. No. 15-08, 7-1-08)

#### § 60.202 EMPLOYERS TO WITHHOLD

(A) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under § 60.200 of this chapter.

(B) Each employer who employs one (1) or more persons but less than fifty (50) persons within the city shall deduct at least monthly or when the employee is paid, if more often than monthly, the license fee due from each employee measured by the amount of salaries, wages, commissions or compensations due by the employer to the employee. The amount deducted shall be paid by the employer to the city on a quarterly basis the periods ending on the last day of March, June, September, and December of each year. Payment shall be due before the last day of the month next following the quarter of the deduction. Each employer who employs fifty (50) or more persons within the city shall deduct at least monthly or when the employee is paid, if more often than monthly, the license fee due from each employee

measured by the amount of salaries, wages, commission or compensations due by the employer to the employee. The amount deducted shall be paid to the city by the employer on a monthly basis. Payment required shall be due on or before the fifteenth day of the month next succeeding the deduction.

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

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

(E) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the city a reconciliation of the occupational license tax 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.

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

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

(H) The president, vice president, secretary, treasure or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one (1) or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the city, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this article at the time that the taxes imposed by this article become or became due.

(I) Notwithstanding subsections (G) and (H) of this section, every employee receiving compensation in the city subject to the tax imposed under § 60.100 shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this article 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) Any employer who employs contract labor and does not withhold license fees must furnish a copy of Form Schedule 1099-Misc (Miscellaneous Income) to the finance officer by February 28 of each year.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.203 RETURNS REQUIRED

(A) All business entity returns for the preceding taxable year shall be made by April 15 of each year, except returns made on 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.

(B) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the city. Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the city may compel the business entity to produce for inspection a copy of any

statements and schedules in support thereof that have not been previously filed. The city may also require copies of reports of adjustments made by the federal government.

(C) Every business entity subject to occupational license tax governed by the provisions of this article 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 business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability the business entity.

(D) 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 business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

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

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.204 EXTENSIONS

(A) The city may grant any 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 business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.

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

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.205 REFUNDS

(A) Where there has been an overpayment of tax under this article, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the city from the employer within two (2) years from the date the overpayment was made.

(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 this city, the occupational license tax 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.

(Ord. No. 21.90, 10-16-90; Amd. Ord. 3.93, 3-2-93; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.206 AUDIT PROVISIONS

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

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

(2) In the case of a return where a business entity understates net profit, or omits an amount properly included in net profits, or both, which understatement or omission, or both, is in excess of twenty-

five percent (25%) of the amount of net profit stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

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

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

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

(C) The city may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (A) of this section.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.207 ADMINISTRATIVE PROVISIONS

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

(B) (1) Any tax collected pursuant to the provisions of this article may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return of the date the money was paid to the city, whichever is the later, except that:

(a) In any case where the assessment period contained in § 60.203 has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.

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

(2) For the purposes of this subsection (B) 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.

(C) The authority to refund or credit overpayments of taxes collected pursuant to this article is vested exclusively in the city.

(D) The corporate dissolution or withdrawal of the corporation from the state shall discharge the foregoing liability of any such person; provided that the personal individual liability shall apply to each or every person holding the corporate office at the time the license fee becomes or became obligated.

(E) In the event the person, 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 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 the business enterprise within the corporate limits of the city for which the tax or fee is due, until the time as the tax or fee, plus appropriate penalties and interest, has been paid in full. Should the city be required to pursue the extraordinary relief the person, firm, corporation, partnership or other entity liable for payment of the tax or fee shall be liable for all court costs incurred by the city and, under appropriate circumstances, reasonable attorney's fees.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.208 INFORMATION TO REMAIN CONFIDENTIAL

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

(B) The city reserves the right to disclose to the Commissioner of Revenue of the Commonwealth or his or her duly authorized agent all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. 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 compensations of any persons or business entity.

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

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.209 REVOCATION OF BUSINESS LICENSE

(A) A general business license issued by the city pursuant to this chapter to any person, partnership, corporation, or other business entity, may be revoked for the violation of or failure to comply with any provisions of this chapter.

(B) Upon receipt of information of a violation of or non-compliance with the provisions of this chapter by a license holder, the city administrator will notify the license holder in writing of the violation or non-compliance, and the license holder will have twenty (20) days thereafter to demonstrate that there is no violation or non-compliance, or to remedy the violation or non-compliance. Upon the license holder's failure to do so within twenty (20) days, the city administrator shall issue an order revoking the license holder's general business license.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.210 USE OF OCCUPATIONAL LICENSE TAX

All money derived from the license taxes under the provisions of this article shall be paid to the city and placed to the credit of the city's general revenue fund.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

#### § 60.299 PENALTIES

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

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

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

(2) The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of

the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25.00).

(B) Every employer who fails to file a return or pay the tax on or before the time prescribed under § 60.203 may be subject to a penalty in amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25.00).

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

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

(E) The city may enforce the collection of the occupational tax due under § 60.200 and any fees, penalties, and interest as provided in subsections (A), (B), (C), and (D) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this article.

(F) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade a payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(G) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this article of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

(H) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the city and required to be filed with the city by the provisions of this article, or by the rules of the city or by written request for information to the business entity by the city.

(I) Any person violating the provisions of § 60.208 by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not longer than six (6) months, or both.

(J) Any person violating the provisions of § 60.208 by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(Ord. No. 21.90, 10-16-90; Amd. Ord. No. 15-08, 7-1-08)

## **ARTICLE II. PRECIOUS METALS DEALER LICENSES**

### **§ 60.300 DEFINITIONS**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

"*PRECIOUS METAL*." Gold, silver, or platinum, alone or in combination, to include coins.

"*PRECIOUS METALS DEALER*." Any person, firm or corporation engaged in the business of purchasing or acquiring secondhand any item containing any precious metal.

"*CANVASSER OR SOLICITOR*." Any person, firm or corporation who, as the duly authorized representative or agent of a dealer, shall canvass or solicit for the secondhand purchase or acquisition of any item containing any precious metal.

"*WORKING DAYS*." Any Monday through Friday of any week, excluding holidays recognized by the

city.

(Ord. No. 11.81, 6-16-81)

§ 60.301 LICENSE REQUIRED

(A) In addition to any other occupational license required by the city, each precious metals dealer must obtain a license from the city for the privilege of conducting the business of secondhand transactions in items containing precious metals.

(B) A precious metals dealers license shall be issued by the city clerk, after receipt of a notice from the city police department that the prospective licensee has complied with application requirements of this article.

(C) A precious metals dealers license must be applied for to the police department of the city. The application shall be on a standard form furnished by the police department and shall contain all information determined by that department to be necessary for an evaluation of the applicant's eligibility for licensure.

(D) The police department shall, within twenty (20) working days of receipt of a completed application form, make a complete review of the accuracy of the information including a criminal records check on any individual named within the application. The following standards shall apply concerning issuance:

(1) No license shall be issued to or held by any person not of good moral character, nor shall a license be issued to any corporation or partnership whose chief officers or members are persons not of good moral character.

(2) No dealer, canvasser or solicitor shall have been convicted of a felony involving moral turpitude.

(3) No dealer, canvasser or solicitor shall have been convicted of a criminal misdemeanor involving moral turpitude within the past two (2) years.

(4) As part of the application process, a prospective dealer must present proof that, if approved for licensure, he or she can secure an approved indemnity bond in the amount of one thousand (\$1,000.00) dollars issued by a surety company authorized to transact business within the Commonwealth of Kentucky, or can post a cash bond in that amount.

(E) The city clerk shall issue the license upon notification by the police department that the application is approved and the applicant has posted the bond required under this section.

(F) If the application is to be denied, the police department shall provide the applicant with the written notification including a statement of the reasons of denial, and any aggrieved applicant shall, within thirty (30) days of the action, have a right to request a hearing before the chief of police.

(G) The police department shall have the authority to suspend or revoke any license issued pursuant to this article for any violation of the terms of this article. However, any aggrieved licensee shall, within thirty (30) days of such action, have a right to request a hearing before the legislative body of the city.

(H) Licenses issued under this section shall not be transferable. An individual license is required for each place of business conducted by a dealer. The license, or a copy thereof, must be posted in a conspicuous place in each place of business.

(I) The cost of the precious metals dealers license shall be fifty (\$50.00) dollars per year the cost of which is not proratable, and is in addition to any other license fee required.

(Ord. No. 11.81, § 2, 6-18-81)

§ 60.302 RECORD KEEPING REQUIRED

(A) Each precious metals dealer shall keep a record, on a standard form furnished by the police department, of each transaction involving the secondhand purchase by the dealer of an item containing a precious metal. The form shall be prepared in ink, in duplicate; the original to be retained by the dealer, the duplicate to be filed by the dealer with the police department by the close of business on the first

working day after the completion of the transaction.

(B) The following must be noted concerning the transaction:

- (1) Date
- (2) Time
- (3) Amount paid
- (4) Disposition of the item, including name and address of purchaser.

(C) The following record must be kept relating to the articles sold:

- (1) Description of the item to include:
  - (a) Manufacturer's name
  - (b) Serial number, if any
  - (c) Any distinguishing marks
  - (d) Weight of the item
  - (e) Pattern
  - (f) Number of items
  - (g) Setting on any precious or semiprecious stones
- (2) A photograph of the item.

(D) The following records must be kept relating to the seller:

- (1) Name
- (2) Address
- (3) Date of birth
- (4) Age
- (5) Hair color
- (6) Race
- (7) Sex
- (8) Height
- (9) Weight
- (10) Build
- (11) General appearance
- (12) Distinguishing marks
- (13) A legible right thumbprint
- (14) Social security account number
- (15) Photograph

(E) The method of identification shall include two (2) identification cards, one with a picture and one corroborating, to include numbers from the cards.

(F) The original record of each secondhand transaction in any item containing any precious metal shall be subject to inspection and examination by any member of the police department, and any member of the police department shall be permitted to examine and inspect any and all items purchased by a precious metals dealer which fall within the scope of this article.

(G) There is specifically excepted from the terms of this article any transaction by a person engaged in business within the city, possessing a current business license from the city, who is either accepting returns for cash, credit or replacement of any item originally purchased from said person, or exchanging an item for another item of greater value. In addition, the terms of this article shall not include any purchase by a retailer from a bona fide manufacturer, nor any banking institution licensed to do business in the Commonwealth of Kentucky.

(Ord. No. 11.81, § 3, 6-16-81)

#### § 60.303 RETENTION PERIOD OF ITEMS

It shall be the duty of each precious metals dealer to retain each and every item containing a precious metal purchased secondhand by him or her in the same state or condition in which it was received, at the place of business here purchased, for a period of not less than fifteen (15) complete working days which time period shall begin to run on the first working day following transfer of the duplicate record of the transaction to the police department of the city. During the fifteen (15) days of retention period the article may not be resold, exchanged, altered or otherwise disposed of.

(Ord. No. 11.81, § 4, 6-16-81)

#### § 60.304 BOND

(A) Before engaging in the business of purchasing secondhand items containing precious metals, a dealer shall post a bond with the city clerk, in the amount of one thousand (\$1,000.00) dollars either with a surety company licensed to do business in the Commonwealth of Kentucky or in cash.

(B) The bond required in this article shall be for a term of one (1) year following the cessation of doing business in precious metals. The bond shall inure to the benefit of the city, or to any person who shall be injured or sustain damage proximately caused by the failure to comply with the terms of this article by any precious metals dealer, canvasser, solicitor or other agent or employee of the dealer.

(Ord. No. 11.81, § 5, 6-16-81)

#### § 60.305 REGULATION OF TRANSACTIONS

(A) No precious metals dealer shall transact any business involving a secondhand purchase of an item containing a precious metal from a minor unless the minor is accompanied by a parent or guardian.

(B) No precious metals dealer shall transact business involving a secondhand purchase of an item containing a precious metal which item the dealer knows or has reason to believe is stolen.

(Ord. No. 11.81, § 6, 6-16-81)

#### § 60.399 PENALTIES

(A) Any person violating any of the provisions of this article shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined not less than twenty-five (\$25.00) dollars, nor more than two hundred fifty (\$250.00) dollars, or imprisoned not more than ninety (90) days, or both, for each offense.

(B) Upon conviction of any violation of the terms of this article, the city shall be authorized to seek forfeiture of the bond provided for in this article, in a civil action in any court of competent jurisdiction in the Commonwealth of Kentucky.

(Ord. No. 11.81, § 7, 6-16-81)

### **ARTICLE III. MOTOR VEHICLE SALES**

#### § 60.400 ESTABLISHMENT

There is hereby established the following regulations concerning the sale of vehicles in the corporate limits of the city.

(Ord. No. 16-2002, 8-20-02)

#### § 60.401 DEFINITIONS

For purposes of this article, the following words shall have the following meanings ascribed to them:

"*AUTOMOBILE DEALER*." Any person, partnership, corporation or other legal entity engaged in selling, offering to sell, trading, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purposes of resale or trade either on his own account or on behalf of another either as his primary business or incidental thereto. "*AUTOMOBILE DEALER*" shall not include any private citizen or person not engaged in the business of selling, offering to sell, soliciting or advertising the sale of new or used motor vehicles privately unless that person is selling vehicles as a business interest; nor shall this article apply to banks, lending institutions or financial institutions conducting a private or public sale of repossessed motor vehicles or motor vehicles sold under court order or through foreclosure proceedings.

(Ord. No. 16-2002, 8-20-02)

#### § 60.402 LOCATION REQUIREMENTS

(A) Every automobile dealer desiring to sell or trade or conduct a sale of new or used automobiles within the city limits must maintain an established place of business within the city which is easily accessible and open for business at all reasonable business hours.

(B) An established place of business must include both an office and a vehicle storage/display lot at a location which is properly zoned for such use and must have its own mailing address.

(1) The office must be in a permanent, enclosed, commercial (not residential) structure on or adjoining the storage/display lot. The office must have at least one hundred (100) square feet of floor space, electricity and a business telephone. The office must be set up in such a way that it is not used for any other purpose other than the sale of vehicles.

(2) The vehicle storage/display lot must have at least two thousand (2,000) square feet and have an impermeable dust-free covering consisting of either asphalt or concrete and must be set up in such a manner that it may not be used for any other purpose other than display or storage of vehicles for sale or dealer customer parking. All storage/display lots must comply with city development regulations as established. All development must comply with the city development regulations.

(C) Unless an automobile dealer otherwise meets the requirements above, the sale, transfer, displaying or trading of vehicles shall not be allowed on a temporary location within the city limits.

(Ord. No. 16-2002, 8-20-02)

#### § 60.403 SIGNAGE REQUIRED

Every automobile dealer must have a sign which identifies the dealer business by name and which is placed on the premises so that it is clearly visible and can easily be read from the nearest roadway with lettering of at least nine (9) inches in height. All other sign provisions of city development regulations must be followed.

(Ord. No. 16-2002, 8-20-02)

#### § 60.404 LICENSING REQUIRED

(A) Any automobile dealer conducting business within the city must have a valid license certificate as required by KRS Chapter 190 et seq. and the regulations of the Kentucky Motor Vehicle Commission. The dealer license certificate, one (1) copy of all sales person's licenses and a city business license must be conspicuously displayed in the automobile dealer's office.

(B) Prior to the conduction of any business by an automobile dealer within the city, the dealer shall apply for all business licenses and pay the license fees required under the city occupational license regulations and amendments thereof.

(Ord. No. 16-2002, 8-20-02)

## ARTICLE IV. INSURANCE LICENSES

### § 60.500 INSURANCE LICENSE FEE.

(A) There is hereby imposed on each insurance company a license fee for the privilege of engaging in the business of insurance within the corporate limits of the city.

(B) The license fee imposed upon each insurance company which issues life insurance policies on the lives of persons residing within the corporate limits of the city shall be six (6) percent of the first year's premium actually collected within each calendar quarter by reason of the issuance of such policies.

(C) The license fee imposed upon each insurance company which issues any insurance policy which is not a life insurance policy shall be six (6) percent of the premiums actually collected within each calendar quarter by reason of the issuance of such policies on risks located within the corporate limits of the city on those classes of business which such company is authorized to transact, less all premiums returned to policyholders; however, any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or death caused thereby, under the provisions of the Worker's Compensation Act; nor for premiums received on policies of group health insurance provided for state employees under KRS 18A.225(2); nor for premiums of medical or health insurance policies.

(D) All license fees imposed by this section shall be due no later than thirty (30) days after the end of each calendar quarter. License fees which are not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.183.

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

- (1) Casualty;
- (2) Automobile;
- (3) Inland marine;
- (4) Fire and allied perils; and
- (5) Life.

(Ord. No. 04-07, 3-12-07)

## CHAPTER 61: TAX PROCEDURES

### ARTICLE I. AD VALOREM TAX

#### § 61.001 TAXATION SCHEDULE

The city levies ad valorem taxes annually, and a schedule of ordinances by number and passage date is included in Tables of Special Ordinances, Taxation Schedule, Table 9, of this Code.

### ARTICLE II. TRANSIENT ROOM TAX

#### § 61.101 IMPOSITION AND RATE

For the purposes of operation of the tourist and convention commission and to finance the cost of acquisition, construction, operation and maintenance of facilities useful in the attraction and promotion of tourist and convention business, there is hereby imposed and levied a transient room tax of three (3) percent of the rent for every occupancy of a suite, room, or rooms, charged by all persons, corporations, or the like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or the like or similar accommodations businesses; provided that this tax shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments, pursuant to KRS 91A.390, and a restaurant tax of three (3) percent of the retail sales by all restaurants, or any person, company, corporation, group or organization selling food at retail, and doing business in the City of Berea, pursuant to KRS 91A.400.

(Ord. No. 7.82, § 4, 4-6-82; Ord. No. 13.82, § 1, 6-1-82; Ord. No. 17.82, § 2, 8-17-82; Ord. No. 05-07, § 1, 3-20-07)

#### § 61.102 QUARTERLY PAYMENT

Every person, company, corporation or the like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar business supplying accommodations in the city shall pay to the city a transient room tax of three (3) percent of the gross rent for every occupancy of a suite, room or rooms charged and collected by them, and every restaurant, eating house, eatery, dining room, café, snack bar or any other person, company, corporation, group or organization selling food at retail in the city, shall pay to the city a restaurant tax of three (3) percent of the retail sales of food, during the applicable period. Payments shall be made quarterly for periods ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. The tax shall be due and payable on or before the last day of the month next following the last day of each quarterly period, and shall be submitted with a return on a form furnished by or obtained from the city treasurer setting forth an aggregate amount of gross rentals charged and collected during the preceding quarter for every occupancy to which the transient room tax applies together, or the gross sales of food at retail charged and collected during the preceding quarter by every person, company, corporation, group or organization subject to the restaurant tax, with such other pertinent information as the city treasurer may require.

(Ord. No. 7.82, § 4, 4-6-82; Ord. No. 13.82, § 1, 6-1-82; Ord. No. 17.82, § 2, 8-17-82; Ord. No. 05-07, § 1, 3-20-07)

#### ***Cross Reference:***

*Annual audits, § 60.002*

#### § 61.103 INTEREST AND PENALTY ON UNPAID TAX

Any tax imposed by this article remaining unpaid after it becomes due as set forth herein shall be subject to a penalty of ten (10%) percent together with interest at the rate of one-half of one percent for each month of delinquency, or fraction thereof, until paid.

(Ord. No. 7.82, § 4, 4-6-82; Ord. No. 13.82, § 1, 6-1-82; Ord. No. 17.82, § 2, 8-17-82)

#### § 61.104 EXCEPTIONS

(A) The transient room tax imposed by this article shall not apply to rentals paid on occupancies of thirty (30) consecutive days or longer; and the restaurant tax shall not apply to casual sales of food by persons, companies, corporations, groups or organizations not engaged in the retail sale of food.

(B) The tax imposed by this article shall be in addition to other general taxes and the occupational or business license tax.

(Ord. No. 7.82, § 4, 4-6-82; Ord. No. 13.82, § 1, 6-1-82; Ord. No. 17.82, § 2, 8-17-82; Ord. No. 05-07, § 1, 3-20-0)

#### § 61.105 RECEIPTS INCLUDED IN AUDIT

All receipts, payments and controls utilized by the city relating to the collection of the transient room or restaurant tax shall be included in the annual audit as prescribed by the Kentucky Revised Statutes.

(Ord. No. 7.82, § 4, 4-6-82; Ord. No. 13.82, § 1, 6-1-82; Ord. No. 17.82, § 2, 8-17-82; Ord. No. 14.93, 7-6-93; Ord. No. 05-07, § 1, 3-20-07)

#### § 61.106 COMMISSION TO BE PAID, BUSINESS SUBJECT TO TAX

(A) The transient tax levied and imposed herein shall be paid by persons occupying rooms, premises, or similar areas for which the tax is levied pursuant to § 61.102. The person, company, corporation, group or organization doing business as a motor court, motel, hotel, and/or the like, shall collect the tax from the persons occupying the premises. However, in the event that the tax is not collected, the person, company, corporation, group, organization, or the like doing business as a motor court, motel, hotel, inn or similar business shall pay an amount equal to the tax to the city treasurer pursuant to other provisions of this article.

(B) The restaurant tax levied and imposed herein shall be paid by the retail purchaser of food for which the tax is levied pursuant to § 61.102. The person, company, corporation, group, or organization selling food at retail shall collect the tax from the person purchasing the food. However, in the event the tax is not collected, the person, company, corporation, group, or organization selling food at retail shall pay an amount equal to the tax to the city treasurer pursuant to other provisions of this article.

(C) In consideration of collection and bookkeeping expenses, the person, company, corporation, group or organization subject to and collecting any tax imposed herein shall be paid a commission of two (2%) percent of all such taxes collected.

(Ord. No. 7.82, § 4, 4-6-82; Ord. No. 13.82, § 1, 6-1-82; Ord. No. 17.82, § 2, 8-17-82; Ord. No. 14.93, 7-6-93; Ord. No. 05-07, § 1, 3-20-07)

#### § 61.199 PENALTIES

Any person who fails, neglects or refuses to make any return required by this article, or refuses to permit the director of finance or any agent designated by him in writing to examine his books, records and papers, or makes an incomplete, false, or fraudulent return, or attempts to do anything whatever to avoid the full disclosure of the amount of gross rent in order to avoid payment of this tax shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined not more than one hundred (\$100.00) dollars or imprisoned for not more than thirty (30) days, or both.

(Ord. No. 7.82, § 5, 4-6-82)

#### **Cross reference:**

*Tourist and Convention Commission, Ch. 22, Art. III.*

## CHAPTER 62: SEXUALLY EXPLICIT ENTERTAINMENT

### § 62.001 DEFINITIONS

As used in this chapter, the following words shall have the following meanings unless the context clearly indicates or requires a different meaning:

"*DIRECTOR*." The chief financial officer of the city or his designee.

"*EMPLOYEE*." Any person hired by or suffered or permitted to work in an establishment engaging in sexually explicit entertainment activities whether that person received remuneration or compensation directly from the operator or owner of the establishment, from patrons of the establishment or from any other source whether by contract of employment or otherwise.

"*ESTABLISHMENT*." A business entity or endeavor, fixed, mobile or traveling, including its owners, operators, directors, shareholders, partners, employees, and possessions.

"*LICENSEE*." A person who is the holder of a valid license under this chapter also including an agent, servant or employee of or other person acting on behalf of a licensee whenever a licensee is prohibited from doing a certain act under this chapter.

"*OPERATOR*." Any individual, partnership, corporation or business entity with all such individuals, partners, shareholders, officers and directors over the age of eighteen (18) who established or maintains a business as its owner or manager and shall also mean licensee as defined in this chapter.

"*OWNER*." Any individual, partnership, corporation or business entity who has legal title to real estate with or without accompanying actual possession thereof or has all or part of the beneficial ownership of any real estate and a right to present use and enjoyment thereof including a mortgage in possession.

"*PERSON*." Any individual, partnership, corporation or business entity.

"*PRINCIPAL USE*." A substantial or significant use. Any of the following criteria shall constitute evidence that an establishment is engaging in sexually explicit entertainment activity as a principal use:

(A) Contains more than fifteen percent (15%) of its stock in trade in material distinguished or characterized by an emphasis in sexual activity.

(B) Devotes more than fifteen percent (15%) of its floor space which is open to either the public generally or to members of the public other than minors for the display of material distinguished or characterized by an emphasis on sexual activities.

(C) Has more than a total of two hundred (200) square feet provided for the display, storage or sale of material distinguished or characterized by an emphasis on sexual activities.

(D) Advertises in a manner visible from the outside of the business premises the availability of material or entertainment distinguished or characterized by an emphasis on sexual activities.

"*SEXUAL ACTIVITIES*." Depiction of human genitals in a state of sexual stimulation, acts of human masturbation, sexual intercourse or sodomy, holding or other erotic touching of human genitals, pubic region, buttocks or breasts.

"*SEXUALLY EXPLICIT ENTERTAINMENT ACTIVITY OR ACTIVITIES*" or "*SEXUALLY EXPLICIT ENTERTAINMENT ESTABLISHMENT*" shall mean one or more of the following activities:

(A) "*CABARET*." An establishment which features as a principal use of its business entertainers, waiters, bartenders, male or female impersonators or persons, either male or female, who expose to public view of the patrons of the establishment at any time the bare female breast below a point immediately above the top of the areola, human genitals, pubic region or buttocks, even if partially or completely covered by translucent material, or human or simulated male genitals in a discernible turgid state.

(B) "*COMMERCIAL SEXUAL ENTERTAINMENT CENTER.*" Any commercial establishment not otherwise described in this chapter which makes available material, services or entertainment appealing to sexual interests including but not limited to a bath house, swingers' club or similar establishment if the establishment or its entertainment, services or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to such adult sexual interests.

(C) "*MASSAGE PARLOR.*" An establishment for treating the human body by rubbing, stroking, kneading, tapping or similar treatment with the hand which promotes its services in a manner designed to appeal to the patron's sexual interest.

(D) "*SELF-DESIGNED SEXUALLY EXPLICIT ENTERTAINMENT CENTER.*" Any establishment which designates all or a portion of its premises as for adults only or has a policy of excluding minors from its premises or from a portion of its premises and which makes available services, entertainment or goods at the premises or at the portion of the premises designated for adults only which are characterized or distinguished by depictions of sexual activities as defined in this chapter.

(E) "*SEXUALLY EXPLICIT AMUSEMENT ARCADE.*" An establishment having as one of its principal uses one or more of the following: customer-operated motion picture devices, peep shows, viewing areas or similar devices either coin-, token-, or slug-operated or which in consideration of an entrance fee display material distinguished or characterized by an emphasis on depictions of sexual activities as defined in this section or which offer male or female persons who expose to view of the customer the bare female breast below a point immediately above the top of the areola, human genitals, pubic region or buttocks, even if partially or completely covered by translucent material or human or simulated male genitals in a discernible turgid state even if completely or opaquely covered.

(F) "*SEXUALLY EXPLICIT BOOK STORE.*" An establishment having as one of its principal uses the sale, rent or display of pictures, books, periodicals, magazines, appliances and similar material which are distinguished or characterized by their emphasis on depictions of sexual activities as hereinafter defined or an establishment with a substantial segment or section devoted to the sale, rental or display of such material.

(G) "*SEXUALLY EXPLICIT ENTERTAINMENT PROVIDER.*" A commercial establishment, such as a hotel or motel, which in addition to providing as the major part of its business services unrelated to depictions of sexual activities as herein defined makes entertainment, either live or on film or video tape, available to its customers, which entertainment has as a dominant theme or is characterized or distinguished by an emphasis on matter depicting, describing or relating to sexual activities if such establishment advertises the availability of such sexually explicit entertainment. The advertisement of such materials shall not include the position of a card or hand bill on or near a television set in a hotel or motel room advising room guests that such sexually explicit movies are available upon request of the guest or advertising informing the public of the availability.

(H) "*SEXUALLY EXPLICIT ESCORT OR ESCORT SERVICE.*" A person or business which is held out to the public to be available for hire and which for monetary consideration agrees to consort with or accompany another or others to or about social affairs, entertainments or places of amusement or within any place of public resort or within any private quarters and advertise, communicate or offers that sexually explicit entertainment activity will be provided.

(I) "*SEXUALLY EXPLICIT MOTION PICTURE THEATER.*" An establishment having or advertising as having as one of its principal uses the presentation of motion picture, slide projections or other similar material having as a dominant theme or characterized or distinguished by an emphasis on matter depicting, describing or relating to sexual activities as defined in this chapter for observation by persons therein.

(J) "*SEXUALLY EXPLICIT STAGE SHOW THEATER.*" An establishment having as one of its principal uses the presentation of live performances of humans or animals having as a dominant theme or characterized or distinguished by an emphasis on matter depicting, describing or relating to sexual activities as defined in this chapter for observation by persons therein.

(K) "*SEXUALLY EXPLICIT VIDEO CASSETTE CENTER.*" A commercial establishment which has

as one of its principal uses the rental or retail sale of video cassettes which depict material distinguished or characterized by an emphasis on or depictions of sexual activities as defined in this chapter and which does not provide an on-premises showing of such materials.

(L) "*TAXI DANCE HALL.*" An establishment operated as a public dance hall where dance partners, either male or female, are available for hire for a monetary consideration payable either by the dance or as part of an entrance fee or membership fee.

(Ord. No. 25-2002, 1-7-03)

#### § 62.002 RESTRICTIONS, REQUIREMENTS AND CONDITIONS

(A) An establishment engaging in a sexually explicit entertainment activity, except as otherwise provided by laws which may be more restrictive, may not have more than one (1) outside flush-to-the-wall, facial style sign, not to exceed in size ten (10) feet in length (horizontal to the ground) and three (3) feet in width (vertical to the ground) with no flashing lights and with no lettering, wording or pictorial or representational matter which is distinguished or characterized by an emphasis on depictions of sexual activities as defined in § 62.001.

(B) An establishment engaging in a sexually explicit entertainment may not display its stock in trade or matter depicting, describing or relating to sexual activities in such manner as to be subject to public view from outside the establishment including but not limited to view from public sidewalks, streets, arcades, hallways or passways.

(C) An operator of an establishment engaging in a sexually explicit entertainment activity or sexually explicit escort service or his employee shall not permit a person under eighteen (18) years of age to be employed by or to enter his establishment or to be a patron of such service; provided, however, that a licensed sexually explicit entertainment establishment which devotes only a portion of its business premises to sexually explicit entertainment or material may permit the public, generally including minors, to enter the portions of the premises within which no sexually explicit entertainment or material is visible or on display. This provision shall not be construed to be an exemption from or in conflict with any requirement found in any statute, ordinance, regulation or other provision of law applicable to a licensee or potential licensee hereunder which is more stringent in terms of an age requirement for employees.

(D) An operator engaging in a sexually explicit entertainment activity shall at all times cause the entrance of his establishment to be so attended as to ensure compliance with the requirements contained in § 62.002(C), above.

(E) An establishment licensed to engage in sexually explicit entertainment shall not provide such entertainment between the hours of 12:00 midnight and 6:00 a.m.

(F) A sexually explicit amusement arcade, except as otherwise provided by laws which may be more restrictive, shall meet the following requirements:

(1) Any wall or partition which is situated so as to create a viewing area in which any amusement device or viewing screen is located shall be constructed of not less than one-hour fire-restrictive material and shall contain no hole or other perforation.

(2) A person who operates or causes to be operated a sexually explicit amusement arcade which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space a film, video cassette or other video reproduction which depicts sexual activities as defined in § 62.001 shall comply with the following requirements:

(a) The interior of the premises shall be configured in such a manner that there shall be an unobstructed, direct-line-of-sight view from a manager's or cashier's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment.

(b) It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in § 62.002(F)(2)(a) above remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times.

(c) No viewing room may be occupied by more than one (1) person at a time.

(3) There shall be no fewer than two (2) doorways, each of a width no less than thirty-six (36) inches, which provide ingress or egress from any room in which an amusement device or viewing area is located; provided, however, that one (1) doorway shall be sufficient in the event the fire chief should so determine. The doorway or doorways shall be unlocked during business hours.

(4) Over every doorway which provides egress from any room in which an amusement device or viewing area is located there shall be maintained an internally illuminated exit sign with letters at least five (5) inches in height.

(5) A light level of no less than ten (10) foot candles at floor level shall be maintained in every portion of establishment to which the public is admitted.

(6) All persons regulated pursuant to this section must comply with the terms and conditions of § 62.002(F) within sixty (60) days after the effective date of this chapter.

(G) The public entrance to a sexually explicit entertainment establishment shall not be located nearer than one thousand (1,000) feet from any church, synagogue or other permanent place of worship, licensed day care center, public or private elementary, middle or secondary school, institution of higher learning or business college or any park, mall or park-like area of open space under the control of a governmental agency. Such distance shall be measured along a straight line from the nearest property line of the real estate on which that building or public park-like area is located to the entrance to such establishment engaging in a sexually explicit entertainment activity.

(H) The public entrance to a sexually explicit entertainment establishment shall not be located nearer than one thousand (1,000) feet from any area zoned residential. Such distance shall be measured along a straight line from the boundary line of the nearest area zoned for residential purposes to the entrance to such establishment engaging in a sexually explicit entertainment activity.

(I) The public entrance to a sexually explicit entertainment establishment shall not be located nearer than seven hundred fifty (750) feet from the public entrance of another sexually explicit entertainment activity establishment. Such distance shall be measured in a straight line from the nearest entrance to a building containing an existing sexually explicit entertainment establishment to the entrance or proposed entrance to the building containing the proposed new sexually explicit establishment.

(J) Notwithstanding the provisions of divisions (G), (H) and (I) above to the contrary, any person who has been issued a sexually explicit entertainment license which is in effect as of the effective date of this chapter and any person who is lawfully engaged in an sexually explicit entertainment activity defined under divisions (C), (F), (H), (I), (J) or (K) of that definition in § 62.001 who obtains a license within the time required by § 62.003(F) may continue to engage in the sexually explicit entertainment activity in which such person is lawfully engages as of the effective date of this chapter as a non-conforming use subject to the limitations of KRS 100.253 and such other restrictions on non-conforming uses as are provided by law.

(K) No adult entertainer, dancer or escort shall be permitted to have any physical contact with any other adult entertainer, dancer, escort, employee, patron or spectator while that adult entertainer, escort or dancer is performing.

(L) No alcoholic beverage shall be present, stored or consumed on any premises licensed for adult entertainment.

(Ord. No. 25-2002, 1-7-03)

#### § 62.003 LICENSING

(A) The owner or operator of an establishment intending to engage or engaging under a previously issued license in a sexually explicit entertainment activity or the owner or operator of a sexually explicit escort or escort service shall make application for a license with the director in accordance with this section. A separate license is required for each separate or assumed name under which an owner or operator conducts business. All applications must be accompanied by a non-refundable one thousand

dollar (\$1,000.00) investigation fee. Such application shall be in writing, under oath, and shall be in the form prescribed by the director and shall contain the following information together with such further information as the director may require:

(1) The name and location of the establishment and the name and business address of the applicant;

(2) The name, address, date of birth and Social Security number of a natural person with an ownership interest in the licensee, such natural person to be determined as follows:

(a) If the licensee is one or more natural persons, then all such natural persons shall comply or any one natural person may comply for the licensee upon certification that he owns a greater share of the licensee than any other person.

(b) If the licensee is a partnership, then the natural person designated as the managing general partner in the partnership agreement, a copy of which is to be attached to the license application, shall comply, but if the partnership agreement designates no natural person as a managing general person, then the natural person who by virtue of his interest or holding in the partnerships or corporations which have formed the partnership owns a greater share of the licensee than any other single natural person shall comply.

(c) If the licensee is a corporation, the natural person, if any, who owns a greater number of shares than any other person shall comply, but if the person owning the greatest number of shares is not a natural person, then the natural person who by virtue of his interests or holding in one or more partnerships or other corporations which own share in the licensee owns a greater portion of the share in the licensee than any other individual natural person shall comply.

(3) The name and address of all directors and officers of any licensee or applicant which is a corporation and the name and address of the licensee's designated agent for service or process.

(4) In the event the applicant or licensee is not the owner of record of the real property on which the licensed establishment is located or to be located, the application shall include a notarized statement from the owner of record of the real property acknowledging that a sexually explicit entertainment establishment is to be located on the real property upon the issuance of the license. The applicant also shall furnish the name and address of the owner of record of the real property and a copy of the lease or rental agreement.

(5) The name, address, date of birth and Social Security number of all persons engaged in the day-to-day employment or contract labor on the license premises. If this licensee is to engage in the sale, rental or showing of books or movies distinguished or characterized by an emphasis on matter depicting or relating to sexual activities as defined in § 62.001, then all persons designated to engage in the selections of such books and movies to be offered for sale or rental or to be shown on the licensed premises shall be subject to the provisions of this division. All persons who at any time shall be responsible for attending the entrance of the establishment for the purpose of ensuring compliance with the provisions of § 62.002(C) shall be subject to the provisions of this division.

(6) The name, address, date of birth and Social Security number of the individual designated by the applicant to undertake to keep the applicant, if licensed, at all times in compliance with the restrictions, requirements and conditions of this chapter and with the rules and regulation promulgated by the director together with the sworn affidavit of the individual stating that he has received a copy of this chapter and that he willfully undertakes on behalf of the applicant to comply therewith.

(7) The name, address, date of birth and Social Security number of the individual designated by the applicant or licensee to be responsible for keeping the information required hereunder current at all times together with a sworn affidavit of that individual stating that he has received a copy of this chapter, that he understands the requirements hereof pertaining to disclosure of information and that he willfully undertakes on behalf of the applicant to comply therewith.

(8) The name and addresses of any rental agent of the property on which the establishment is located.

(9) The nature of the activity or activities to be engaged in at such locations.

(10) All criminal convictions of any offense set forth in KRS Chapter 528 (gambling), KRS Chapter 529 (prostitution), KRS 506.030 (if such solicitation pertains to an offense of solicitation of prostitution under KRS Chapter 529), KRS Chapter 510 (sexual offenses), KRS Chapter 531 (pornography) or any similar law of the United States of America or sister states of the Commonwealth of Kentucky within the last five (5) years of the applicants, owners, directors, partners or employees whose names are required pursuant to § 62.003. Any such person who is on parole for any of the offenses set forth above shall submit to the director the terms of such parole.

(11) The name and address of any person to whom the applicant wants mail notice to be given in case of violation or other matters affecting the license hereunder.

(12) A photograph or drawing of any signs displayed or proposed to be displayed on the exterior of the establishment and a statement of the dimensions of such signs.

(13) Proof of compliance with the occupational license fee laws of the city.

(14) A certificate of occupancy where required and, in all other cases, a letter of compliance issued by the code administrator certifying that the business is in compliance with applicable zoning laws or has non-conforming use rights and that the proposed use will not constitute an enlargement or expansion of the scope of such non-conforming rights.

(15) A certificate from the fire chief or his designee that all applicable fire regulations have been met, and in the case of a sexually explicit amusement arcade, that all requirements of § 62.002(F) have been met.

(16) A statement from the building inspector or his designee that the premises comply with applicable provisions of the Uniform Kentucky Building Code, as adopted by the city.

(17) A statement from the district health department director or his designee that the premises are adequately ventilated and contain public restrooms which satisfy the requirements of 902 KAR 10:010. The district health department director or his designee shall cause the premises of each licensee to be inspected annually to determine continued compliance with the provisions of this division.

(18) If the application is for a sexually explicit escort service, the application must also include:

(a) The hours that the escort service will be open to the public, including the hours any escorts are with a patron;

(b) The methods of promotion the health and safety of escorts and protecting them from assault, battery and rape;

(c) The methods of supervising the escorts to prevent the escort from charging the patron any fee in addition to the fee paid to the escort service by the patron;

(d) The methods of supervising the escorts to prevent the escort from soliciting acts of prostitution or offering to provide sexual stimulation or sexual gratification; and

(e) The method of compensating the escorts.

(B) The information required by § 62.003(A) above shall be at all times current even after the granting of a license by the director.

(1) It shall be the responsibility of the operator or other person designated in the license application to notify the director no later than the close of the first business day after the effective date of any changes, alterations or modifications in any information contained in the application including but not limited to:

(a) The name of the establishment;

(b) Any change in the corporate information required for the application;

(c) Names and addresses of employees;

- (d) Names and addresses of the owners of the property on which the establishment is located;
- (e) Name and address of designated agent for service of process;
- (f) Nature of the activity or activities to be engaged in at the establishment; and
- (g) The name and address of any person the applicant wants mail notice to be given in case of violation or other matters affecting the license.

(2) In addition, each sexually explicit escort service licensed pursuant to this chapter shall keep a current list of all escorts providing service to it. This list must contain the name, address and work permit card information for each escort and shall be available upon request to the director, his designee and to any law enforcement officer.

(C) The director will cause the premises to be inspected after such application has been received and all application requirements are in compliance. The director shall then issue a license forthwith if all restrictions, requirements, conditions and all applicable requirements of this chapter and other applicable laws have been met, except that no license will be issued if the applicant or any owner, operator, director, partner, shareholder or employee has been convicted of any offense set forth in KRS Chapter 528 (gambling), KRS Chapter 529 (prostitution), KRS 506.030 (if such solicitation pertains to an offense of solicitation of prostitution under KRS Chapter 529), KRS Chapter 510 (sexual offenses), KRS Chapter 531 (pornography) or any similar law of the United States of America or sister states of the Commonwealth of Kentucky within the last five (5) years. Provided, however, the granting of a license does not certify compliance with all applicable laws nor does it estop the city from enforcement of all applicable law or ordinances. If inspection reveals failure to comply with any restrictions, requirements or conditions herein, the director shall notify the applicant in writing of that fact, stating what failures have been discovered, allowing a reasonable time to correct such defects and informing the applicant of the appeal procedure if the applicant does not agree with the director's decision.

(D) Any license granted pursuant to this chapter shall at all times be conspicuously posted and displayed in a public area so as to be open to view of the patrons and proper public authorities.

(E) Application for or granting of a license according to this chapter is deemed to permit periodic inspections of any establishment required to have a license under this chapter by the director or his designee or any city law enforcement officer for the purpose of verifying compliance with the terms and conditions of this chapter.

(F) Thirty (30) days after the effective date of this chapter, no operator shall maintain, operate or conduct an establishment engaging in sexually explicit entertainment activities defined under § 62.001 and thereafter no operator shall own, operate or be employed at an establishment engaging in sexually explicit entertainment activities which has sought and been denied a license according to this section and unless all dancers, performers and entertainers appearing at the establishment and escorts have obtained the work permit card required by § 62.003(J), below.

(G) No owner shall permit sexually explicit entertainment activities to be conducted on his property unless and until such is properly licensed according to this section, except as permitted under § 62.003(F), above.

(H) No person shall permit himself to be an operator or an employee at a sexually explicit entertainment activity or sexually explicit escort or escort service which has not been validly licensed according to this section, except as permitted under § 62.003(F), above.

(I) All licenses shall be for the fiscal year July 1 to June 30 or the remaining portion of such fiscal year. The annual license fee, other than for sexually explicit escort services, shall be two thousand five hundred dollars (\$2,500.00) and shall be pro-rated at the rate of two hundred dollars (\$200.00) per month. The annual license fee for sexually explicit escort services shall be five thousand dollars (\$5,000.00) and shall be pro-rated at the rate of four hundred dollars (\$400.00) per month. All license fees shall be paid to the City Treasurer. Application for renewal of a license shall be made on or before June 30 of each year and accompanied by the annual fee along with any occupational license fee required by Chapter 60 of the Code of Ordinances. Such application shall also contain any changes in the information required by §

62.003(A) above which have occurred since the previous application.

(J) Any person intending to be employed or to work in any capacity at a sexually explicit entertainment establishment or sexually explicit escort service shall prior to engaging in same make application for a work permit card with the director in accordance with this section.

(1) Such application shall be in writing, under oath, in the form prescribed by the director and shall include:

- (a) The legal name of the applicant;
- (b) Any and all names used by the applicant in the course of performance of the applicant's duties as a dancer, performer or entertainer;
- (c) The applicant's residence address;
- (d) The applicant's date of birth;
- (e) The applicant's Social Security number;
- (f) A recent photograph of the applicant; and
- (g) The applicant's fingerprints.

(2) The applicant shall submit with his application a one-time non-refundable fee of one hundred dollars (\$100.00).

(3) The director shall grant the applicant the work permit card promptly after receiving a report from the chief of police that the applicant has not been convicted in the past five (5) years of an offense set forth in KRS Chapter 529 (prostitution), pandering or under KRS Chapter 510 (sexual offenses) or of trafficking in a controlled substance or any similar law of the United States of America or sister states of the Commonwealth of Kentucky.

(4) The work permit card so granted shall remain valid unless the director is informed that the applicant has been convicted in the past five (5) years of an offense set forth in KRS Chapter 529 (prostitution) or an offense set forth in KRS Chapter 510 (sexual offenses) or pandering or of trafficking in a controlled substance or any similar law of the United States of America or sister states of the Commonwealth of Kentucky.

(5) A work permit card shall be replaced if lost or stolen for a fee of fifty dollars (\$50.00).

(6) After the effective date of this chapter, no dancer, performer or entertainer shall dance, perform or otherwise be occupied in the providing of entertainment at a sexually explicit entertainment establishment or sexually explicit escort service without having obtained the work permit card required by this chapter.

(7) The work permit card must be carried in the possession of the person at all times the person is working or employed on behalf of the sexually explicit entertainment establishment or sexually explicit escort service.

(8) A separate work permit card is required in each name under which the person will provide sexually explicit entertainment or sexually explicit escort services.

(Ord. No. 25-2002, 1-7-03)

## CHAPTER 63: FRANCHISE REGULATIONS

### ARTICLE I. GENERAL PROVISIONS

#### § 63.001 DECLARATION OF FINDINGS

The city hereby declares as a legislative finding that the rights-of-way within the city:

- (A) Are a unique and physically limited resource;
- (B) Are critical to the travel and transport of persons and property in the city; and
- (C) Are intended for public uses and must be managed and controlled consistent with that intent; and
- (D) Can be partially occupied by the facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the city and its citizens; and
- (E) Require adoption of the specific additional regulations established by this chapter to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of communications and other services in the public interest.

(Ord. No. 16-05, 6-21-05)

#### § 63.002 TITLE

This chapter may be referred to and cited as the "Communications Services Franchise Ordinance".

(Ord. No. 16-05, 6-21-05)

#### § 63.003 APPLICABILITY

The requirements of this chapter shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this chapter shall be disregarded pursuant to this subsection except on express application to and determination by the city to such effect based on the specific factual circumstances demonstrated. The provisions of this chapter shall be deemed incorporated in each communications franchise granted.

(Ord. No. 16-05, 6-21-05)

#### § 63.004 PRESERVATION OF AUTHORITY

Any rights granted pursuant to this chapter and pursuant to any franchise authorized hereunder are subject to the authority of the city to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisees and other holders of franchises shall be subject to and comply with all applicable laws enacted by the city pursuant to its home rule or statutory powers, to the extent not in conflict with state or federal law. Nothing in this chapter shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

(Ord. No. 16-05, 6-21-05)

#### § 63.005 PUBLIC INSPECTION OF RECORDS

Certain information required to be filed with the city pursuant to this chapter is subject to inspection and copying by the public pursuant to the provisions of the Kentucky Open Records Act, KRS 61.870 *et seq.*

(Ord. No. 16-05, 6-21-05)

#### § 63.006 INDEMNIFICATION

As a condition of use of the rights-of-way, each franchisee at its sole cost and expense, shall indemnify, protect, defend (with counsel acceptable to the city) and hold harmless the city, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of or in relation to the city's award of the franchise, the rights granted to the franchisee, or the activities performed, or failed to be performed, by such franchisee under the franchise or use of the rights-of-way, except to the extent such acts or use arise from or are caused by the gross negligence or willful misconduct of the city, its elected officials, officers, or employees. This indemnification shall survive the expiration or termination of any franchise or use of the rights-of-way.

(Ord. No. 16-05, 6-21-05)

#### § 63.007 COMPLIANCE WITH LAWS

In performing activities and exercising its rights and obligations under any franchise, each franchisee and other holder of a franchise shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

(Ord. No. 16-05, 6-21-05)

#### § 63.008 ENFORCEMENT; ATTORNEYS' FEES

The city shall be entitled to enforce this chapter and any franchise through all remedies lawfully available, and each franchisee shall pay the city its costs of enforcement, including but not limited to reasonable attorneys' fees, in the event that franchisee is determined judicially to have violated the terms of this chapter or any franchise.

(Ord. No. 16-05, 6-21-05)

#### § 63.009 RELATIONSHIP OF THE PARTIES

Under no circumstances shall any franchise authorized by this chapter be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

(Ord. No. 16-05, 6-21-05)

#### § 63.010 DEFINITIONS

For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

**"AFFILIATE."** As to any person, each person, directly or indirectly, controlling, controlled by, or under common control with such person.

**"ANTENNA."** Any device that transmits or receives signals. Such signals include but are not limited to radio and infrared waves for voice, data or video communications purposes.

**"CABLE ACT."** The Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

**"CABLE FRANCHISE."** The rights and obligations extended by the city to a person to own, lease, construct, maintain, or operate a cable system in the rights-of-way within the franchise area for the

purpose of providing cable services. Any such authorization, in whatever form granted, shall not mean or include:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city, including the provision of communications services;

(2) Any permit, agreement, or authorization required in connection with operations in the rights-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

“*CABLE FRANCHISE FEE.*” Shall have the same meaning as is ascribed to the term "Franchise Fee" at 47 U.S.C. 542(g).

“*CABLE INTERNET SERVICES.*” The provision by a person of access to the Internet or any Intranet to customers over a cable system and shall include the provision of incidental services that are required by law to be treated under the same regulation as such direct access service. The city shall treat cable internet services as a cable service unless it is definitively determined under applicable law that cable internet service is not a cable service, in which case any person providing or wishing to provide cable internet services shall obtain a separate communications franchise from the city. All prior payments to the city attributable to cable internet service under a cable franchise shall be irrefutably deemed to be lawful compensation, irrespective of any rates or terms required for any future use under any new communications franchise.

“*CABLE SERVICES.*” Shall have the same meaning as is ascribed to the term "Cable Service" at 47 U.S.C. 522(6).

“*CABLE SYSTEM.*” Shall have the same meaning as is ascribed to the term "Cable System" at 47 U.S.C. 522(7).

“*COLLOCATION.*” The shared use of facilities, including, but not limited to, the placement of conduit owned by more than one rights-of-way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit. “*COLLOCATION*” does not include interconnection of facilities or the sale or purchase of capacity (whether bundled or unbundled).

“*COMMUNICATIONS.*” The transmission via the facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

“*COMMUNICATIONS FRANCHISE.*” A franchise for use of the rights-of-way for communications services as authorized herein and executed by the city and franchisee.

“*COMMUNICATIONS FRANCHISE FEE.*” The fee imposed by the city on franchisee for use of the rights-of-way pursuant to a communications franchise pursuant to § 63.110 of this chapter.

“*COMMUNICATIONS SERVICE.*” The transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentality, facilities, conduit, apparatus ("communications facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include cable service or open video system service, but cable services and open video system service shall be subject to separate franchising requirements and applications. This term does not include over-the-air radio or television broadcasts to the public at large licensed by the FCC or any successor thereto.

“*CITY.*” The City of Berea, Kentucky.

“*FACILITIES.*” Any portion of a system located in, along, over, upon, under, or through the rights-of-

way.

“*FCC.*” The Federal Communications Commission of the United States of America or any successor thereto.

“*FRANCHISE.*” A Communications Franchise as defined herein or any other franchise granted by the city pursuant to Sections 163 and 164 of the Kentucky Constitution or by the Kentucky General Assembly prior to the adoption of Sections 163 and 164 of the Kentucky Constitution which permits the use of the rights-of-way for communications services. Use of this definition in this chapter is not intended to include any license or permit for the privilege of transacting and carrying on a business within the city, as may be required by any other ordinance or laws of the city or the state.

“*FRANCHISE AREA.*” Unless otherwise specified in the applicable franchise, means the entire unincorporated area of the city as it is now constituted or may in the future be constituted.

“*FRANCHISEE.*” The party subject to a communications franchise, or its successors, assigns, or transferees.

“*LESSEE.*” A person who provides communications services within the city solely by leasing facilities and who has no control over what, where or how any facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

“*OPEN VIDEO SYSTEM (OVS).*” Service shall have the same meaning as is ascribed to the term at 47 U.S.C. 573.

“*PERSON.*” Any corporation, partnership, limited liability company, proprietorship, individual, organization, governmental entity or any natural person.

“*RENEWAL.*” A new communications franchise granted to an existing franchisee.

“*RESELLER SERVICE PROVIDER.*” means a person who provides communications services within the city solely by reselling communications services and who has no control over what, where or how any facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

“*RIGHTS-OF-WAY.*” The surface and space on, above and below every street, alley, road, highway, lane or other public right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. Rights-of-way shall not include public property owned or leased by the city and not intended for rights-of-way use, including, but not limited to, parks or public works facilities.

“*STATE.*” The Commonwealth of Kentucky.

“*SYSTEM.*” Any and all equipment, structures, materials or tangible components located in the rights-of-way and used to provide communications services, including without limitation all plant (whether inside or outside), cabinets, surface location markers, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, antennae, lines, pipes, mains, conduit, ducts, regenerators, repeaters, vaults, pedestals, manholes, handholds, pull boxes, splice closures, wires, cables, towers, wave guides, and anything else designed and constructed for the purpose of producing, receiving, amplifying or distributing communications services.

“*TELECOMMUNICATIONS ACT.*” The Telecommunications Act of 1996 codified at Title 47 of the United States Code.

(Ord. No. 16-05, 6-21-05)

## **ARTICLE II. COMMUNICATIONS SERVICES**

### **§ 63.100 UNLAWFUL TO OPERATE WITHOUT A FRANCHISE**

It shall be unlawful for any person to erect, install, maintain, operate, repair, replace, remove or restore communications facilities or to provide communications services by use of facilities in the rights-of-way in

the city without a valid, unexpired franchise from the city, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by city ordinance. Unless otherwise provided hereinafter by city ordinance, reseller service providers and lessees shall not be required to obtain a franchise.

(Ord. No. 16-05, 6-21-05)

#### § 63.101 FRANCHISES NONEXCLUSIVE

The authority granted by the city in any franchise shall be for the nonexclusive use of the rights-of-way. The city specifically reserves the right to grant, at any time, such additional franchises or other rights to use the rights-of-way for any purpose to any other person, including itself, as it deems appropriate, subject to all applicable laws.

(Ord. No. 16-05, 6-21-05)

#### § 63.102 NATURE OF RIGHTS GRANTED BY ANY FRANCHISE

Franchises shall not convey title, equitable or legal, in the rights-of-way, and shall give only the right to occupy rights-of-way, for the purposes and for the period stated in this chapter and as may be further limited by the franchise. No franchise may excuse franchisee from obtaining appropriate access or attachment agreements before locating its facilities on another person's facilities. All franchises shall be deemed to incorporate and be limited by the provisions of this chapter and shall create rights inuring solely to the benefit of the franchisee.

(Ord. No. 16-05, 6-21-05)

#### § 63.103 APPLICATION REQUIRED

Applications for an original communications franchise granted hereunder shall be filed with the city clerk with ten (10) additional copies. All applications received by the city from the applicants will become the sole property of the city. Applicants shall submit all requested information as provided by the terms of this chapter. The following information must be complete and verified as true by the applicant:

(A) *Name and address of applicant.* The applicant's name, address, e-mail address and telephone and facsimile numbers; date of application and signature of applicant or appropriate corporate officer(s); the name, address and e-mail address, and telephone and facsimile numbers of a local representative who shall be available at all times; and information regarding how to contact the local representative in an emergency.

(B) *Description of proposed system.* A description of the applicant's proposed system design.

(C) *Services.* A statement setting forth a description of all the types of services proposed.

(D) *Applicant organization.*

(1) If the applicant is an individual, partnership, or unincorporated association, it shall state the names and addresses of all persons (including corporations) having a proprietary or equitable interest in and to the applicant's business operation, and in and to the prospective communications franchise if granted. The term equitable interest shall include all assignments of value, as well as all contingent assignments of any right or privilege under the prospective communications franchise, and shall also include any benefit, payment, or emolument whatsoever resulting from the grant of a communications franchise under this chapter.

(2) If the applicant is a non-public corporation, the application shall state, additionally, the names and addresses of the officers, directors, and shareholders of the corporation, together with the number of shares held by each shareholder.

(3) If the applicant is a publicly held corporation, as defined by the rules and regulations of the Securities and Exchange Commission, the application shall contain the states in which the applicant is incorporated and/or qualified to do business, the names and addresses of the officers, directors, and shareholders owning twenty percent (20%) or more of applicant's outstanding stock, together with the

number of shares held by each shareholder.

(4) If the applicant is a corporation, the application shall provide written evidence that it is authorized to do business in the Commonwealth of Kentucky, as certified by the Secretary of State.

(5) Applicant must fully disclose the ownership of the facilities to be used in rendering the service.

(E) *Intra-company relationships.* An organizational chart depicting the applicant's intra-company relationships, including parent, subsidiary or affiliate companies.

(F) *Technical description.* A technical description of the type of system proposed by the applicant and applicant's five (5) year plan for the installation of the system. The following information shall be included in the application:

(1) If the applicant is proposing an underground installation in existing ducts or conduits within the rights-of-way, information in sufficient detail to identify:

(a) The excess capacity currently available in such ducts or conduits before installation of applicant's system; and

(b) The excess capacity, if any that will exist in such ducts or conduits after installation of applicant's system.

(2) If franchisee is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way:

(a) The location, depth, size and quantity of proposed new ducts or conduits;

(b) The excess capacity that will exist in such ducts or conduits after installation of applicant's system.

(c) A preliminary installation schedule and completion date.

(G) *Existing franchises.* Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the locations of all other franchises and the dates of award for each location.

(H) *Engineering statement.* A statement from the applicant's senior technical staff member, or consultant, advising that the applicant's planned system and operations thereof would meet all the requirements set forth herein.

(I) *Litigation and violations.*

(1) A statement as to whether the applicant or any of its officers or directors or holders of twenty percent (20%) or more of its voting stock has in the last ten (10) years been involved in litigation which in any way is related to the operation and performance of a communications system or in any way relates to the applicant's ability to perform its obligations under this chapter.

(2) A statement as to whether the applicant or any of its officers or directors or holders of twenty percent (20%) or more of its voting stock has in the last ten (10) years been served with notice of a franchise violation by a municipality.

(J) *Additional requirements.*

(1) Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application but must be separately bound and submitted with the above number of copies. The city may, at its discretion, consider such additional information as part of the application.

(2) Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the applicant's application must be executed.

(3) Conditional applications will not be accepted.

(4) A copy of the applicant's certificate of authority from the Public Service Commission ("PSC") where the applicant is lawfully required to have such certificate from the PSC.

(5) A copy of the applicant's certificate of authority from the FCC where the applicant is lawfully required to have such certificate from the FCC.

(6) A copy of all insurance policies and certificates required under this chapter.

(7) A statement signed by the applicant that the applicant agrees to be bound by all provisions of this chapter and agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a system in the rights-of-way.

(8) The applicant shall keep all of the information required in this section current at all times by providing to the city information of changes within sixty (60) days following the date on which the applicant has knowledge of any change.

(9) The information provided by applicant shall be certified as true and correct and applicant shall be responsible to certify to the city any material changes to the information provided in the completed application during the term of any franchise.

(K) *Supplementation to applications.* The City Council reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.

(L) *City's rights reserved.* The city reserves the right to waive all formalities and/or technicalities where the best interest of the city may be served.

(Ord. No. 16-05, 6-21-05)

#### § 63.104 STANDARDS AND PROCEDURES FOR APPROVAL OR RENEWAL OF FRANCHISES

Franchises shall be granted in accordance with Kentucky Constitution Sections 163 and 164. The city shall authorize franchises or renewals to any eligible franchisee for the right and privilege to construct, own, operate, repair, replace and maintain facilities in, through and along the city's rights-of-way for the purposes of providing communications services on a nonexclusive basis within the city, subject, however, to the standards, terms and conditions herein set forth within this chapter, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, the FCC and the Kentucky Public Service Commission. The city may establish standard franchises setting forth the minimum requirements for all franchisees.

#### § 63.105 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE

(A) Any franchise granted hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of a resolution granting a franchise hereunder, provided that on or before said date franchisee shall:

(1) File with the city an unconditional acceptance of the franchise grant and enter into and execute such contracts and documents as required by the city that are consistent with the terms and provisions of this chapter;

(2) File certificates of insurance as set forth in this chapter;

(3) File such bond or bonds as required in this chapter; and

(4) Advise the city clerk in writing of franchisee's address for mail and official notifications from the city.

(B) Franchisee, by acceptance of any franchise granted hereunder, acknowledges that it has relied upon its own investigation and understanding of the power and authority of the city to grant such a franchise.

(C) Franchisee, by acceptance of any franchise granted hereunder, acknowledges that it has thoroughly examined and is familiar with the terms and conditions of this chapter, the resolution granting the franchise and such other contracts and documents entered into by franchisee relative to the franchise.

(D) Franchisee, by acceptance of any franchise granted hereunder, acknowledges and agrees that the matters contained in franchisee's application for the franchise or supplements thereto, shall be incorporated into the resolution granting the franchise as though set out verbatim and shall thereafter be considered an integral part of such ordinance in all communications, correspondence, filings, or applications with all appropriate regulatory agencies, including but not limited to the FCC or the Public Service Commission.

(Ord. No. 16-05, 6-21-05)

§ 63.106 CABLE SERVICE AND OPEN VIDEO SYSTEMS (OVS); SEPARATE FRANCHISE REQUIRED

A communications franchise shall not permit a franchisee to provide cable services as a cable operator (as defined by 47 U.S.C. § 522(5)) within the city. Upon a franchisee's request for a franchise to provide cable services as a cable operator (as defined by 47 U.S.C. § 522(5)) within the city, the city shall timely negotiate such cable franchise in good faith with the franchisee. A communications franchise shall also not permit a franchisee to operate an open video system. A person may operate an open video system only if that person obtains a separate franchise permitting same, and such person remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where such person otherwise complies with FCC regulations promulgated pursuant to 47 U.S.C. § 573. Absent such applicable separate franchise from the city, a franchisee shall be prohibited from offering OVS service and any such service shall be considered a breach of its franchise.

(Ord. No. 16-05, 6-21-05)

§ 63.107 USE OF RIGHTS-OF-WAY; POLICE POWERS; FRANCHISEE'S USE SUBORDINATE

(A) A franchisee shall construct and maintain its facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other city codes and ordinances in effect as of the date of the award of its franchise or thereafter adopted to the extent not in contravention of state or federal law. The grant of a franchise does not in any way affect the continuing authority of the city through the proper exercise of its home rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The city makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of the rights-of-way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the franchisee.

(B) The use of the rights-of-way authorized by any franchise shall in all matters be subordinate to the city's use and rights therein. Without limiting the generality of the foregoing:

(1) All rights and privileges granted herein are subject to the police powers of the city and its rights under applicable laws and regulations to regulate the construction, operation, and maintenance of franchisee's system, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the city shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce regulations relating to equal employment opportunities and the right to adopt and enforce ordinances and regulations containing rights-of-way, communications, and utility standards.

(2) The city reserves the right to exercise its police powers, notwithstanding anything in this chapter and in any franchise to the contrary. Any conflict between the provisions of this chapter or a franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter.

(3) Franchisee shall not be excused from complying with any of the requirements of this chapter or any subsequently adopted amendments to this chapter, by any failure of the city on any one (1) or more occasions to seek, or insist upon, compliance with such requirements or provisions.

(4) If federal or state law alter the required services, fees, costs, conditions or standards upon which the communications system is to operate, the city shall have the right to amend this chapter to make it

consistent with the modified federal or state laws.

(5) Any franchise granted pursuant to this chapter shall be subject to any present and future legislation or resolution, which may be enacted by the city.

(Ord. No. 16-05, 6-21-05)

#### § 63.108 EMERGENCIES

(A) Franchisee shall assign a management level person to coordinate with, and assist the city's Emergency Management Agency, in the development of emergency plans.

(B) If at any time, in case of fire or disaster in the city, it shall become necessary in the reasonable judgment of the city, to cut or move any facilities, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by franchisee, at its sole expense.

(Ord. No. 16-05, 6-21-05)

#### § 63.109 TERM

A franchise shall be effective for a term of ten (10) years from its effective date.

(Ord. No. 16-05, 6-21-05)

#### § 63.110 COMMUNICATIONS FRANCHISE FEES

Franchisee shall pay to the city a franchise fee in the amount of five thousand dollars (\$5,000.00). Said fee shall be submitted with grantee's application. In the event the application is denied, the franchise fee shall be returned within ten (10) business days.

(Ord. No. 16-05, 6-21-05)

#### § 63.111 HOLDERS OF MULTIPLE FRANCHISES

Persons holding a communications franchise and also a cable franchise shall fairly and accurately apportion and attribute revenues received to the various services offered.

(Ord. No. 16-05, 6-21-05)

#### § 63.112 MAINTAIN RECORDS

A franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the system in a manner that allows the city to determine whether the franchisee has properly calculated its communications franchise fee in compliance with this chapter. Should the city reasonably determine that the records are not being maintained in such manner, the franchisee shall correct the manner in which the books and/or records are maintained so that the franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations, the regulations of the Kentucky Public Service Commission and any other governmental entity that regulates utilities in Kentucky, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The failure to provide information or maintain records as required herein shall be grounds for forfeiture or revocation of a franchise.

(Ord. No. 16-05, 6-21-05)

#### § 63.113 RIGHT OF INSPECTION AND AUDIT

The city or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, all documents, records or other information that pertain to the system and/or a franchisee's communications franchise fee obligations under its franchise. In addition to access to the records of the franchisee for audits, upon request, a franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the franchise. A franchisee shall pay all reasonable audit costs incurred by the city to a maximum of one (1) audit per year.

(Ord. No. 16-05, 6-21-05)

§ 63.114 DESCRIPTION OF SERVICE

A franchisee shall on an annual basis provide the city with a description of the communications services offered within the city during the prior year. Any individual service or item for which the franchisee has a separate charge shall be considered a separate service.

(Ord. No. 16-05, 6-21-05)

§ 63.115 COMMUNICATIONS FRANCHISE FEE NOT A TAX; PAYMENT OF TAXES

The communications franchise fee is compensation for use of the rights-of-way and shall in no way be deemed a tax of any kind. The communications franchise fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the city. A franchisee shall be fully responsible for the payment of all applicable taxes.

(Ord. No. 16-05, 6-21-05)

§ 63.116 DUTY TO NOTIFY CITY OF RESELLER SERVICE PROVIDERS AND LESSEES

Each franchisee shall notify the city of the name and address of each reseller service provider and lessee with which it enters into an agreement related to the resale of franchisee's communications services and/or the lease of facilities, provide to the city a copy of all such agreements between franchisee and such reseller service providers and/or lessees, and describe the compensation to be provided to franchisee relating to such reseller service providers and/or lessees.

(Ord. No. 16-05, 6-21-05)

§ 63.117 SALE OR LEASE OF FACILITIES

Except as otherwise may be provided by law or franchise, a franchisee shall not sell, or otherwise transfer possession or control of any facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued franchise which includes the authority to erect, install, maintain, operate, repair, replace, remove or restore such facilities. Franchisee shall provide the city at least thirty (30) days prior notice of any intended sale, lease or transfer of possession or control.

(Ord. No. 16-05, 6-21-05)

§ 63.118 ASSIGNMENT OF FRANCHISE

(A) A franchise does not run with the land. A franchisee shall not sell, assign, sublet, dispose of or otherwise transfer a franchise (or any of the rights or privileges granted by such franchise) to another person, including, without limitation, by operation of law, without the prior written consent of the city; provided that such transfer may occur without the consent of the city to an affiliate upon thirty (30) days prior notice to the city; and provided, further, that entry into an agreement with a reseller service provider related to the resale of the franchisee's communications services or entry into an agreement with a lessee related to the lease of the facilities shall not, by itself, be deemed such a transfer. The city's consent to such a transfer shall not be unreasonably withheld.

(B) In seeking the city's consent to a transfer, the Franchisee and its proposed transferee shall provide to the city in writing:

(1) Such information with respect to the proposed transferee as is currently required of applicants for a renewal of a franchise; and

(2) An agreement, in form and substance acceptable to the city, that the transferee will assume and be bound by all of the provisions, terms, and conditions of this chapter and the franchise and shall be primarily liable and obligated under such documents without, however, relieving the transferring franchisee from its obligations to the city under such documents, including without limitation its obligations of this chapter.

(C) Franchisee shall be liable to the city for any and all costs incurred by the city, including, without

limitation, reasonable attorneys' and other consultants' fees, resulting from any such attempt to transfer the franchise.

(D) Nothing in any approval by the city of any transfer pursuant to this section shall be construed to waive, release or delegate any rights or powers of the city.

(Ord. No. 16-05, 6-21-05)

#### § 63.119 FORFEITURE OF FRANCHISE AND PRIVILEGE

In case of failure on the part of a franchisee, its successors and assigns, to comply with any of the provisions of this chapter or its franchise, or if the franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this chapter or the terms of its franchise, the franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this chapter and its franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the city shall carry out the following proceedings: Before the city declares the forfeiture or revocation of a franchise, it shall first serve a written notice upon the franchisee, setting forth in detail the neglect or failure complained of, and the company shall have thirty (30) days thereafter, or such other reasonable period established by the city council, in which to cure the default by complying with the conditions of its franchise and fully remedying any default or violation. If at the end of such thirty (30) day or other reasonable period, the city determines that the conditions have not been complied with, the city shall take action by an affirmative vote of a majority of the city council present at the meeting and voting, to terminate the franchise, setting out the grounds upon which the franchise is to be forfeited or revoked. Nothing herein shall prevent the city from invoking any other remedy available at law or in equity.

(Ord. No. 16-05, 6-21-05)

#### § 63.120 SPECIAL RULES FOR GOVERNMENTAL ENTITIES

Nothing herein requires the city to apply the provisions of this chapter to a governmental entity if the city determines that it is not in the public interest to do so, and nothing in this chapter shall be read to require a governmental entity to comply with this chapter where the city cannot enforce the ordinance against such entity as a matter of law. The city is authorized to enter into agreements with other governmental agencies to facilitate the city's use and management of the rights-of-way, and such agreements shall be enforceable according to their respective terms and notwithstanding any provision of this chapter.

(Ord. No. 16-05, 6-21-05)

### **ARTICLE III. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS**

#### § 63.200 ENCROACHMENT PERMIT

A franchisee shall be subject to and comply with the additional or supplementary terms and conditions of the city's "encroachment on rights-of-way permit," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of said encroachment permit shall be deemed a condition of any franchise.

(Ord. No. 16-05, 6-21-05)

#### § 63.201 ADDITIONAL FACILITIES REQUIREMENTS; PLANNED INFRASTRUCTURE

When a franchisee installs any new underground facilities, the franchisee shall, unless waived by the city, simultaneously install conduit provided by the city ("city conduit"). The city conduit shall be installed in accordance with city specifications. No communications franchise fee shall apply to any city conduit.

(Ord. No. 16-05, 6-21-05)

#### § 63.202 REMOVAL OF FACILITIES

Upon expiration of a franchise, whether by lapse of time, by agreement between the franchisee and the city, or by forfeiture thereof, the franchisee shall remove, at its sole cost, from the rights-of-way any and all of its facilities that are the subject of such franchise within a reasonable time after such expiration, not to exceed ninety (90) days, and, it shall be the duty of the franchisee immediately upon such removal to restore the rights-of-way from which the facilities are removed to as good condition as the same were before the removal was effected and as required by the city. Notwithstanding the foregoing, the city may allow facilities to be left in place when the city determines in its sole discretion that it is not practical or desirable to require removal.

(Ord. No. 16-05, 6-21-05)

#### § 63.203 RELOCATION OF FACILITIES

Whenever the city shall in its exercise of the public interest request of the franchisee the relocation or reinstallation of any of its facilities, the franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the facilities shall be the exclusive obligation of such franchisee. A franchisee shall, upon request of any other person requesting relocation of facilities and holding a validly issued building or moving permit of the city, temporarily raise, lower, or relocate its wires or other facilities as may be required for the person to exercise the rights under the permit within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit; provided, however, that the franchisee may require such permit holder to make payment in advance for any expenses incurred by said Franchisee pursuant to such person's request.

(Ord. No. 16-05, 6-21-05)

#### § 63.204 FRANCHISEE RESPONSIBLE FOR COSTS

A franchisee shall be responsible for all reasonable costs incurred by the city that are directly associated with the franchisee's erecting, installing, maintaining, operating, repairing, replacing, removing or restoring its facilities in the rights-of-way. A franchisee shall be responsible for its own costs incurred in removing or relocating its facilities when required by the city due to city requirements relating to maintenance and use of the rights-of-way for city purposes.

(Ord. No. 16-05, 6-21-05)

#### § 63.205 INSURANCE AND BONDS

During the term of any franchise, a franchisee shall obtain and maintain at its sole expense, all insurance and bonds required by this chapter. Nothing contained in this chapter shall limit a franchisee's liability to the city to the limits of insurance certified or carried.

(A) All persons submitting an application for a franchise in accordance herewith shall file with their applications performance bonds with a surety company or trust company or companies as surety or sureties solely for the protection of the city in an amount determined by the city council to be reasonable for the proposed scope of the system to be effective. The determination of the amount of the performance bond required shall be made in a non-discriminatory manner. Said performance bond shall provide for the faithful performance of any and all provisions of this chapter and franchisee's franchise, including but not limited to construction and installation, maintenance, relocation, communications franchise fee payment, and/or removal of any abandoned facilities. Upon demonstration of the completion of the construction of the system by franchisee to the city, the city shall reduce the amount of the performance bond by seventy-five percent (75%).

(B) Said performance bond shall indemnify the city in its own right and as trustee, from any damages or losses arising out of the failure of franchisee to faithfully perform and satisfactorily complete construction of the system in accordance with this chapter and any agreement and ordinance in connection herewith, including, but not limited to, the cost of removal of any construction.

(C) The failure of franchisee to comply with its obligations under this chapter or the franchise as

determined by the city shall entitle the city to draw against said performance bond.

(D) The rights reserved to the city with respect to the performance bonds required hereunder are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such performance bond shall affect any other rights the city may have.

(E) The performance bonds required hereunder shall not expire or be materially altered without thirty (30) days written notice and without securing and delivering to the city a substitute, renewal and replacement bond in conformance with this chapter. In the event the city does draw monies against the performance bonds required hereunder, within ten (10) days thereafter, Franchisee shall pay such funds to the bonding company as necessary to bring said performance bonds back to the applicable principal, where it shall continue to be maintained. The performance bonds required hereunder shall contain the following endorsements:

"It is hereby understood and agreed that this performance bond may not be reduced, altered or canceled by Franchisee or the bonding company without thirty (30) days written notice, by certified mail, to the City Clerk."

(F) Immediately upon the effective date of the resolution granting a franchise under this chapter, franchisee shall file with the city clerk the following liability insurance policies issued by a company authorized to do business in the Commonwealth and acceptable to the city council:

(1) General liability. One million dollars (\$1,000,000.00) each occurrence, five million dollars (\$5,000,000.00) aggregate, against bodily injury, death, or property damage.

(2) Automobile insurance. One million dollars (\$ 1,000,000.00) each occurrence, and aggregate against bodily injury, death, or property damage for any of Franchisee's owned or leased motor vehicles used in the construction/installation of any lines, facilities or equipment authorized by the franchise.

(3) Workers compensation. The amount required by Kentucky Revised Statutes.

(G) Franchisee shall maintain on file with the city clerk a certified copy of the insurance policy(s) specifically endorsed to include all liability assumed by franchisee hereunder and a certificate of insurance certifying the coverage required under this chapter, which certificate shall be subject to the approval of the city as to the adequacy of the certificate and of the insurance certified under the requirements of this chapter. Such policy(s) and certificate shall be identified on their face by the name of franchisee, and shall be submitted to the city clerk, in accordance with the terms and conditions of this chapter. Failure to maintain adequate insurance as required under this chapter shall be deemed a breach of the franchise.

(H) Franchisee shall maintain public liability, property damage and other insurance required by this chapter that protects franchisee and the city, its officers, agents, employees and appointed and elected officials from any and all claims for damages or personal injury including death, demands, actions, and suits brought against any of them arising from operations under the franchise or in connection therewith. This insurance coverage constitutes a minimum requirement and shall in no way be deemed to lessen, limit or define the liability of franchisee, related entities, its successors or assigns, under the terms of the franchise.

(I) The city council reserves the right to make increases in the amount of insurance coverage referred to in this section at any time.

(Ord. No. 16-05, 6-21-05)

#### § 63.206 PERMITS

Prior to performing any construction or installation work in the public rights-of-way, franchisee shall apply to the city for a permit, and shall include descriptive information about the specific location of any lines, facilities, boxes, or related equipment. All terms and conditions of the permit application shall apply and be adhered to.

(A) Franchisee shall furnish detailed plans of the work to be done within the public rights-of-way and provide other such information as required by the city.

(B) Franchisee shall coordinate any construction work within the public rights-of-way with the city and shall begin construction work only after approval of the city.

(C) All permits issued by the city shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by city personnel.

(Ord. No. 16-05, 6-21-05)

#### § 63.207 NOTIFICATION

Franchisee shall notify the mayor, in writing, at least fifteen (15) days prior to construction. Such written notification shall contain the location of the construction, the starting date and the estimated completion date.

(Ord. No. 16-05, 6-21-05)

#### § 63.208 UNDERGROUND CONSTRUCTION

Except as provided in § 63.209, all of franchisee's facilities shall be installed underground and all street crossings installation shall be made by trenchless technology.

(A) Franchisee shall register any and all underground line locations with the Berea Municipal Utility and the local "Before You Dig" or "BUD" office for tracking specific underground line locations.

(B) All backfilling and replacement of pavement shall be done by franchisee:

(1) In accordance with city requirements and all restoration work shall be completed to the same or better condition than found; and

(2) To the satisfaction of the city, and, if not acceptable, may be completed by the city at franchisee's expense.

(C) At any time franchisee disturbs the yard, residence, or other real or personal property in the city, franchisee shall ensure that the yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.

(D) The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by franchisee.

(Ord. No. 16-05, 6-21-05)

#### § 63.209 AERIAL CONSTRUCTION

Aerial construction of facilities must be specifically authorized by the city prior to construction and located to minimize interference with the other uses of the rights-of-way and other public properties, and interference with the rights and reasonable convenience of property owners whose property adjoins any of the rights-of-way and other public properties. The decision to authorize above ground construction shall be applied in a non-discriminatory manner. If other franchisees have facilities above ground and there is capacity available, above ground installations shall be permitted until such time as all franchisees are required to relocate underground. Aerial facilities shall be moved underground at franchisee's own cost upon request from the city or when other users of the same rights-of-way convert to underground facilities.

(Ord. No. 16-05, 6-21-05)

#### § 63.210 STANDARDS

Any work required or performed pursuant to this chapter shall be done in accordance with federal, state and local law, and the National Electric Code.

(A) In the event that franchisee leases space on the poles or in the conduits of an electric or other utility, franchisee shall abide by the construction and other requirements of said utility, and the granting of a communications franchise by the city shall not be construed or interpreted in any way to alleviate franchisee's responsibilities and obligations to the pole or conduit owner.

(B) Franchisee, its contractors, sub-subcontractors and anyone directly or indirectly employed by franchisee, shall conduct such operations so as to promote and preserve the public safety and general welfare of the citizens of the city.

(C) All construction, installation or maintenance by franchisee shall be completed with diligence and with respect to all property, contracts, persons, rights and the interests and rights of the public.

(D) During any phase of construction, installation, maintenance, and repair of the system, franchisee shall use materials of good and durable quality and all such work shall be performed in a safe, thorough, and reliable manner.

(Ord. No. 16-05, 6-21-05)

#### § 63.211 TRAFFIC

Franchisee's work in the rights-of-way shall be accomplished with a minimum of disruption and interference to the free flow of vehicular and pedestrian traffic on the public rights-of-way or public land.

(A) Franchisee shall maintain lanes of vehicular traffic in each direction at all times during construction, installation or maintenance activity.

(B) Traffic control devices to protect and control pedestrian and vehicular traffic in any construction, maintenance or installation areas may be prescribed by the city in accordance with the *Manual on Uniform Traffic Control Devices*.

(Ord. No. 16-05, 6-21-05)

#### § 63.212 DELAY

City required improvements to city rights-of-way shall not be delayed by work authorized by this chapter.

(Ord. No. 16-05, 6-21-05)

#### § 63.213 SPECIAL EXCEPTIONS

The city may grant a special exception to the requirements of this chapter if a franchisee, upon application, demonstrates with written evidence that:

(A) The exception will not create any threat to the public health, safety or welfare;

(B) Franchisee demonstrate that the increased economic burden and the potential adverse impact on franchisee's construction schedule resulting from the strict enforcement of the requirement actually or effectively prohibits the ability of franchisee to provide communications services in the city; and

(C) Franchisee demonstrates that the requirement unreasonably discriminates against franchisee in favor of another person.

(D) Any special exceptions shall be granted in a non-discriminatory manner.

(Ord. No. 16-05, 6-21-05)

#### § 63.214 INSPECTIONS

All construction, installation and operation of franchisee's system in the rights-of-way are subject to inspection by the city.

(Ord. No. 16-05, 6-21-05)

§ 63.215 REPAIR OF SUNKEN PAVEMENT OVER EXCAVATION

In case the pavement or the surface of the rights-of-way over any excavation should become depressed or broken at any time within five (5) years after the excavation has been completed and before resurfacing of the rights-of-way, natural wear of the surface excepted, franchisee shall, upon written notice from the city, immediately proceed to inspect the depressed or broken area over the excavation to ascertain the cause of the failure. Franchisee shall make repairs to the installation or backfill and have the pavement restored as specified by the city. If the pavement is not restored as specified by the city within the time period specified by the city, and unless delayed by a strike or conditions beyond franchisee's control, the city may cause the work to be done after giving franchisee twenty-four (24) hours final notice. The cost thereof, including, but not limited to, any inspection costs and administrative overhead incurred by the city, shall be assessed against franchisee.

(Ord. No. 16-05, 6-21-05)

**ARTICLE IV. MISCELLANEOUS**

§ 63.300 ADMINISTRATION OF FRANCHISE

The city shall be responsible for the continued administration of this chapter and any franchises granted hereunder.

(Ord. No. 16-05, 6-21-05)

§ 63.301 NO CAUSE OF ACTION AGAINST THE CITY

A franchisee shall have no remedy or recourse whatsoever against the city for any lost, cost, expense, or damage arising from any of the provisions or requirements of a franchise, or because of the enforcement thereof by the city, or for the failure of the city to have the authority to grant, all, or any part, of the rights therein granted; provided, however, that each franchisee acknowledged by its acceptance of the franchise that it has accepted the rights therein granted in reliance upon its independent and personal investigation and understanding of the power of authority of the city to enter into the franchise authorized herein with the franchisee; provided further that each franchisee acknowledges by its acceptance of the franchise that it has not been induced to enter into the franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of the city, or by any other person concerning any term or condition of the franchise that it has carefully read the provisions, terms, and conditions hereof and thereof and is willing to, and does accept, all of the risk attendant to such provisions, terms, and conditions.

(Ord. No. 16-05, 6-21-05)

§ 63.302 NON-ENFORCEMENT BY THE CITY

A franchisee shall not be relieved of its obligation to comply with any of the provisions of this chapter or its applicable franchise by reason of any failure of the city to enforce prompt compliance.

(Ord. No. 16-05, 6-21-05)

§ 63.999 PENALTY

Except as expressly stated in this chapter, the express or implied repeal or amendment by this chapter of any other ordinance or part thereof shall not affect any liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this chapter. Those liabilities and penalties are continued and penalties shall be imposed and enforced under the repealed or amended ordinance as if this chapter had not been adopted.

(Ord. No. 16-05, 6-21-05)