

**CITY OF OAK GROVE, KENTUCKY
ORDINANCE NO. 2008- 05**

**AN ORDINANCE AMENDING ORDINANCE NO. 2008-02 THE IMPOSITION AND
ADMINISTRATION OF OCCUPATIONAL LICENSE REQUIREMENT, AND PAYMENT
OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES
CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS
WITHIN THE CITY OF OAK GROVE, KENTUCKY, AND REPEALING
ORDINANCE NOS. 1981-03, 1984-06, 1990-03, 1998-01, 2004-01, 2004-11
AND 2005-06**

WHEREAS, the City of Oak Grove desires to comply with the requirements of KRS 67.750 to 67.790 and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and businesses entities conducting businesses, occupations, and professions within the City of Oak Grove, so that the assessment and payment of Occupation License Taxes can be administrated more efficiently.

WHEREAS, said Ordinance shall replace, and therefore, repeal Ordinance Nos. 1981-03, 1984-06, 1990-03, 1998-01, 2004-01, 2004-11 and 2005-06.

Now, therefore, be it ordained by the City Council of the City of Oak Grove, Kentucky, as follows:

SECTION ONE - DEFINITIONS

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

(1) "Business entity" means 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.

(2) "Business" means 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, incomes or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.

(3) "CATEGORIES" means classification into which businesses shall be placed. These definitions are intended to be relative guidelines to be followed by the City Clerk/Financial Director who will make the determination as to the categorization of applicants. Categories shall include but not be limited to examples given in the definitions:

(a) "Wholesale Trade" Business that primarily engages in selling merchandise to: Auto dealers, tobacco dealers, retailers, industrial, commercial, institutional or professional business users or to other wholesalers; or acting as agents or brokers and buying merchandise for or selling merchandise to such individual or companies. Also, included are professional service corporations.

(b) "Retail" All retail business shall be taxed at the same rate:

1. Service: Businesses providing services or entertainment, to the public, including eating and drinking places, hotels and motels, finance and real estate services, motion pictures, amusement, recreational services, health, educational and social services, museums, galleries, security services.

2. Trade: Businesses engaging in selling goods or merchandise to the general public for personal or household consumption or sale of such goods, such as furniture, groceries, clothing, drug store, and hardware.

(c) "Professional" Businesses that are a recognized profession including all activities requiring licensing by the Commonwealth of Kentucky, shall fall under this category. Examples shall include but not be limited to: Accountant, architects, artists (galleries, and such), attorneys, advertising, professional bondsmen, (civil or criminal cases), barbers, beauticians, real estate (agencies, developers, brokerages), insurance agencies, investment brokerages (counseling, representation, financial brokers, and the like), consultants (engineering, management, planning, government, public relations, tax, financial and others), contractors and builders, engineers and surveyors (as defined by state law), photographers, physicians (surgeons, dentists, psychiatrists, psychologists), medical related fields (chiropractor, optometrists, osteopaths, nurses, labs, and the like), and any other activity that requires state certification.

(4) "City" means the City of Oak Grove, Kentucky.

(5) "City Clerk" means the appointed City Clerk of the City of Oak Grove and may also be referred to as "Tax Officer".

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

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

(b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or to their 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.

(7) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to gross ~~net~~ income as reported on the business entity's federal income tax return become final and unappealable.

(8) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(9) "Financial Director" The Financial Officer for the City of Oak Grove, Kentucky and may also be referred to as "Tax Officer".

(10) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

(11) "Employee" means 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.

(12) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

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

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

(13) "Event" means a publicized, organized occasion, such as a celebration, festival, benefit, contest or game. An event is a distinct happening, customarily of short duration, dedicated to a specific purpose. As defined herein, an event is limited to one (1) occasion per year of no more than fourteen (14) consecutive days.

(14) "Gross receipts" means all revenues or proceeds derived from the sale, lease, or rental of goods or services, or property by a business entity reduced by the following:

- (a) Sales and excise taxes paid and
- (b) Returns and allowances.

(15) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, 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.

(16) "License Fee" means license tax and the two (2) terms shall be interchangeable as used in this ordinance.

(17) "Licensee" means any person required to file a return or to pay a license fee under this Ordinance.

(18) "Local business" means any business that either:

- (a) owns their business site in the City or
- (b) Has a valid lease for their business site from the property owner or manager that is for a period over six (6) uninterrupted months or
- (c) Involves regular or routine visits to an established customer base within the City. The business site as used above must be a permanent building which is properly zoned for business use.

(19) "Open to the Public" means any retail, wholesale, or service business which maintains an office or storefront with the City.

(20) "Person" shall mean 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.

(21) "Return" or "Report" means 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.

(22) "Sales Revenue" means receipts from the sale, lease, or rental of goods, services, or property.

(23) "Tax district" means any City of the first to fifth class with the authority to levy gross receipts, or occupational license taxes.

(24) "Taxable gross receipts" in case of a business entity having payroll or sales revenues both within and without the City means gross receipts as defined in subsection ten (10) of this section, and is apportioned under section four (4) of this ordinance.

(25) "Taxable gross receipts" in case of a business entity having payroll or sales revenues only within the City means gross receipts as defined in subsection ten (10) of this section.

(26) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which gross receipts is computed.

(27) "Temporarily" means not of a permanent nature or stay and not involving regular or routine visits to an established customer base within the City.

(28) "Transient business" means any person who passes through the City temporarily for the purpose of conducting a business which involves the buying, selling, or exchanging of goods or services. The activity of a transient business must not involve regular or routine visits to an established customer base within the City.

SECTION TWO - OCCUPATIONAL LICENSE APPLICATION REQUIRED

A. Every person and business entity engaged in any business in the City of Oak Grove shall be required to apply for and obtain an occupational license from the City of Oak Grove before the commencement of business or in the event of a change of business status. ~~A one-time license registration fee of One Hundred Dollars (\$100.00) shall be made at the time of application.~~ An initial occupational fee of one-hundred dollars (\$100.00) shall be made at the time of application. The occupational fee will not be prorated. Licensees are required to notify the City of any changes in address, the cessation of business, or any other changes that render the information supplied to the City in the license application inaccurate. In the event the change of name involves the obtaining of a new Federal Identification Number (FIN), then a new license registration fee is required.

B. Any person and business entity, who by advertising or otherwise, profess to be doing business within the City shall be presumed to be doing business within the City, and as such, will be subject to the provisions of this ordinance.

~~C. An initial Occupational fee of one hundred dollars (\$100.00) shall be made at the time of application. An annual license reinstatement fee of one hundred dollars (\$100.00) will be made prior to July 1 and will cover the period of July 1 through June 30 of the following year. The occupational fee will not be prorated.~~

~~D. C.~~ Any person doing business in the City of Oak Grove that does not meet the definition of a local business may be required to post a cash bond in the amount of Five Hundred Dollars (\$500.00) with the City at time of registration. This bond will be held until the City deems all Gross Receipts License Fees Returns and Employee Withholding requirements have been met. The City may call on this bond at any time if any fees due the City become delinquent after giving the entity an opportunity to pay the outstanding fees. This type of business shall also be required to pay Employees Withholding Fees on a monthly basis.

SECTION THREE - 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 or 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.

(1) The occupational license tax shall be 1.5% of all wages and compensation paid or payable in the City for work done or services performed or rendered in the City by every resident and nonresident who is an employee;

(2) The occupational license tax shall be measured by the gross receipts from business conducted in the City by a resident or nonresident business entity as follows:

Wholesale ---- .06% or .0006

Retail ----- .15% or .0015

Professional -- .38% or .0038

(3) The minimum payment for an occupational license is \$100.00

(4) All gross profit returns will be based on the business calendar year end or fiscal year end; and due as provided in Section 6 (A), "by the fifteenth day of the fourth month following the close of the fiscal year".

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 member 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 property valued and assessed by Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their gross receipts derived from the non-public service activities apportioned to the City;

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

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

(7) Any domestic servants employed in private homes. For purposes of this section a "domestic servant" shall be defined as an individual employed in a private home to drive his employer as a chauffeur or employed on the grounds or in the home of his employer to cook, clean, wash, garden or transport or otherwise care for the person, home, grounds and/or vehicles of the employer. License fees are required for individuals who are employed by a cleaning service, personal nursing service, chauffeuring service or other service entity which offer the service of its employees to the public.

(8) Persons who conduct yard, garage, patio or similar sales events lasting three (3) or fewer days and are not repeated within a thirty (30) day time frame.

C. The following business activities are specifically subject to this ordinance:

(1) The operation of warehouses, apartments, hotels, motels, hotel buildings, office building, and similar structures.

(2) Income or rentals of real estate located within the City.

(3) A trust estate engaged in any enterprise, activity or business, which produces income specifically including the rental of real estate located within the City. ~~If the trust estate is engaged in residential rentals and there are three (3) or less units the trust estate is exempt.~~ Income from investments, interest and dividends from investments and dividends from investment activities of a trust estate are exempt.

(4) An independent contractor engaged in business. An independent contractor is a person, who while performing services for another, is not under the direction and control of such person as to the results to be accomplished.

(5) Property owners, corporations, or any type of partnership receiving rental income from commercial real property. The fact the business owners, partners or corporations are also the property owners does not negate the fact the rental of commercial property is a separate business in terms of this ordinance.

(6) Event sponsors where any of the vendors are from the private sector of the business community and profits adhere to any individual shareholder, individual, or private business. Licenses are not required for charitable, religious or government vendors where no profits adhere to an individual shareholder, individual or private business concern. This section does not apply to parades.

(7) Any business engaged in buying, selling or dealing in securities, stocks, or bonds with the general public.

SECTION FOUR - APPORTIONMENT

A. Except as provided in subsection (D) of this section, gross receipts shall be apportioned as follows:

(1) For business entities with both payroll and sales revenue in more than one (1) City, by multiplying the gross receipts 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 (B); and

(2) For business entities with sales revenue in more than one (1) City, by multiplying the gross receipts 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 sale, lease, or rental of tangible personal property is in the City if:

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

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

(c) 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;

(d) Sales revenue from the sale, lease, or rental of real property is allocated to the City 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 an equitable allocation and apportionment of gross receipts.

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 ordinance. The occupational license tax imposed in this ordinance 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 that taxable year during which the business entity had business activity in the City;

H. If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same method of accounting required for federal income tax purposes.

SECTION FIVE - 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 Section (3) of this ordinance.

B. Each employer shall deduct from the compensation due any employee the amount of the license tax measured by the compensation due each employee under this section beginning on January 1 of each year:

(1) The payments to be made on account of such deductions shall be made to the City Financial Director, on a form acceptable to the City, on or before the last day of every month following the first full month of employment.

(2) Employers whose monthly payments are less than One Hundred Dollars (\$100.00) may file returns quarterly for the periods ending March 31st, June 30th, September 30th and December 31st with returns due thirty days after the end of each quarter.

(3) Employers on quarterly filing whose quarterly payment is more than Three Hundred Dollars (\$300.00) will revert to monthly payments beginning with the next monthly payment due and will remain on monthly filings for all subsequent periods or until written justification is furnished to the City Financial Director to obtain approval to return to quarterly filing.

C. Every employer who fails to withhold or pay to the City any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the City for any sum or sums withheld or required to be withheld in accordance with the provisions of this 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 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, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the 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 the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.

I. Notwithstanding subsections (A) and (B) of this section, every employee receiving compensation in the City subject to the tax imposed under Section (3) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance 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.

SECTION SIX - RETURNS REQUIRED

A. All business entity gross profit 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 day of the fourth month following the close of the fiscal year. Forms for returns shall be supplied by the City.

B. In compliance with KRS 67-768 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. Any parent corporation operating a subsidiary within the City must make a one-time initial election to submit their Occupational License Return based upon the consolidated federal tax return or the activities of the subsidiary only. Once the initial election is made, the same method of reporting must be used each year.

D. Every business entity subject to an occupational license tax governed by the provisions of this ordinance 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 of the business entity.

E. 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.

F. 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.

SECTION SEVEN - TRANSIENT OCCUPATIONAL LICENSE FEE

A. Businesses subject to this section are transient businesses as defined herein, which shall include, but not be limited to peddlers, hucksters, solicitors, salespersons, photographers, circuses, carnivals, amusement companies, and other similar persons.

B. Any person which regularly services, delivers, buys, or sells goods and services to retail, wholesale, or other permanent businesses in the City, shall not constitute a transient business, but rather shall be subject to the provisions and requirements of section 3 (C) of this ordinance.

C. Those subject to section 7(G) (1) (2) and (3) shall be exempt from the provisions of section H this ordinance.

D. It shall be unlawful for any transient business or representative of a transient business to engage in any activity in the City without first obtaining a license to do so as provided in this ordinance and having otherwise complied with the terms and provisions of this section.

E. A person desiring to engage in transient business within the City shall first make application in writing to the City Tax Officer on forms provided by the City before the applicant shall be authorized to do business. Such application shall state the name, permanent address, and telephone number of the business; the name address, telephone number, any other personal identification data of every business representative to be engaged in activity in the City and the type or nature of goods or services provided.

F. The Tax Officer upon receipt of a completed application and payment of license fee shall within three (3) days issue a license to the representative of the transient business. The licensee and/or the representative shall have his license in his immediate possession at all times when engaging in business in the City and shall display it upon request to a City Official.

G. The following types of transient business require a special form of license and fees:

(1) A person or business engaging in the business of promoting, operating, or otherwise conducting a flea market, an antique mall, or consignment shop shall pay a yearly license fee of One Hundred Dollars (\$100.00) which shall authorize the activity of individual booths, or spaces in these businesses. The annual fee shall be for the period of July 1 to June 30 of the following year. A new application for a period of less than twelve (12) months shall not be prorated.

(2) A local produce and vegetable market shall be authorized to operate on parking lots of local malls provided the vegetables and produce are

grown locally in West Kentucky. A license fee of One Hundred Dollars (\$100.00) will be charged.

(3) Any event sponsor is required to purchase an event license prior to the event. Such license shall be One Hundred Dollars (\$100.00) for each event which shall license all temporary booths, spaces and vendors not otherwise excluded in said event. Event licenses shall not apply to carnivals or circuses, which must obtain licenses under section seven - H of this ordinance.

H. A transient business shall pay to the City a daily fee of Ten Dollars (\$10) if there are three (3) or less employees with a minimum of One Hundred Twenty-Five Dollars (\$125.00) covering a period of four (4) consecutive days. The daily fee shall be Sixty Dollars (\$60.00) if there are four or more employees with a minimum fee of Two Hundred Dollars (\$200.00) covering a period of four consecutive days.

I. Failure to purchase the license required by this section of this ordinance prior to engaging in business in the City shall, in addition, to the penalties set forth in this ordinance, be subject to a late charge not to exceed one-half (1/2) of the calculated fee due. Any person whose license has been lost or stolen or destroyed may apply to the Tax Office for a duplicate license. The fee for issuance of a duplicate license shall be Ten Dollars (\$10.00). Licenses may be renewed upon expiration in accordance with paragraphs F and G of this section of this ordinance.

J. It shall be unlawful for any transient business or representative to exhibit or expose any goods for sale, purchase or exchange or place any bulletin boards, bicycle stands or any signs in or on any right-of-way, sidewalk, pavements, parks, playgrounds, or any other property owned, maintained, possessed or operated by the City without written permission from City Tax Officer. Any "sidewalk sales" must be authorized by the City Clerk or City Tax Officer.

SECTION EIGHT - 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.

SECTION NINE - REFUNDS

A. Where there has been an overpayment of tax under Section (5) of this ordinance, a refund shall be made to the employer to the extent of overpayment only if a written application for refund 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.

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

(3) In the case of an assessment of additional 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.

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 (1) of this section

SECTION ELEVEN - ADMINISTRATIVE PROVISIONS

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

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

(1) In any case where the assessment period contained in Section (8) of this ordinance has been extended by an agreement between the business entity and the City, the limitation contained in this subsection shall be extended accordingly.

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

C For the purposes of this subsection and subsection (1) 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.

D. The authority to refund overpayments of taxes collected pursuant to this ordinance is vested exclusively in the City.

SECTION TWELVE - INFORMATION TO REMAIN CONFIDENTIAL

A. No present or former employee of the City of Oak Grove shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax laws 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 of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the City the reciprocal right to obtain information from the files and records of the Kentucky Revenue Cabinet 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 gross receipts or compensation of any person or business entity.

C. In addition, the City is empowered to execute similar reciprocal agreements as described in subsection (2) 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 ordinance.

SECTION THIRTEEN – VENDOR LISTS

Each business shall, no later than sixty (60) days following the enactment of this ordinance provide to the City a comprehensive list of all vendors with whom it conducts business within the City. Thereafter, this list shall be updated when the business furnishes its tax return to the City; as required by Section VI herein.

SECTION FOURTEEN - PENALTIES

A. A business entity subject to tax on gross receipts 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:

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

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

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).

B. Every employer who fails to file a return or pay the tax on or before the time prescribed under Section (6) of this ordinance may be subject to a penalty in an 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).

C. In addition to 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 ordinance, 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 section (3) of this ordinance 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 ordinance.

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

G. Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not 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 ordinance 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 section twelve (12) of this ordinance by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars (\$500) nor imprisoned for not longer than six (6) months, or both.

J. Any person violating the provisions of section twelve (12) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1000) nor imprisoned for not more than one (1) year, or both.

SECTION FIFTEEN - USE OF OCCUPATIONAL LICENSE TAX

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

SECTION SIXTEEN - SEVERABILITY

Each section and each provision of each section of this ordinance are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, is held by a court of law to be unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of the rest.

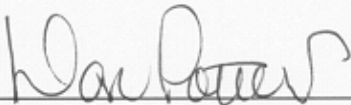
SECTION SEVENTEEN - UNCONSTITUTIONALITY

Any and all existing ordinances inconsistent with this ordinance are hereby repealed. Should any part of this ordinance be declared void or unconstitutional, the remaining ordinance shall remain in full force and effect.

Approved on First Reading this 15th day of April 2008.

Approved on Second Reading this 30th day of April, 2008.

APPROVED:



DAN POTTER, Mayor

ATTEST:



EVELYN McDANIEL, CAO/City Clerk

PUBLISHED: In full in the Kentucky New Era this 8th day of May, 2008.