

ORDINANCE 10-2017

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AN ORDINANCE AMENDING CHAPTER 16, ARTICLE I, SECTION 16-1, "INSURANCE LICENSE FEE" AND FURTHER AMENDING CHAPTER 16, ARTICLE II, SECTIONS 16-22, 16-23, 16-24, 16-25, 16-26, AND 16-35 "OCCUPATIONAL LICENSE FEES" OF THE OWENSBORO MUNICIPAL CODE, TO RAISE THE RATE OF THE INSURANCE LICENSE FEE EFFECTIVE JULY 1, 2018, AND RAISING OCCUPATIONAL LICENSE FEES AND NET PROFIT FEES OF THE CITY OF OWENSBORO, EFFECTIVE JULY 1, 2017.

WHEREAS, the 2017-2018 Annual Budget has been prepared and demonstrates a need for increased revenues to the City; and

WHEREAS, KRS 91A.030 (1) requires the passage of an appropriation ordinance based on the needs of the applicable budget.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That Chapter 16, Article I, Section 16-1 of the Owensboro Municipal Code be, and hereby is, amended, effective July 1, 2018, to read as follows:

Sec. 16-1. - 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 ~~eight~~-ten (~~8~~10) percent of the first year's premiums 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 ~~eight~~-ten (~~8~~10) 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 policy holders; however, the license fee or tax imposed herein shall not apply to premiums received on:

(1) Policies of group health insurance provided for state employees under KRS 18A.225;

(2) Policies insuring employers against liability for personal injuries to their employees or death of their employees caused thereby, under the provisions of KRS ch. 342;

~~[(3) Policies issued through Kentucky Access created in KRS ch. 304, subtitle 17B; or]~~

~~[(4)]~~ Policies for high deductible health plans as defined in 26 U.S.C. sec. 223(c)(2), or-

(4) Policies exempt from the provisions of this Article I by state or federal law.

(d) The license fee imposed by this section shall not apply to premiums received on health insurance policies issued to individuals. The license fee imposed by this section on premiums received on health insurance policies other than those issued to individuals (health insurance as defined by KRS 304.5-040 shall remain at four (4) percent and shall not be subject to any increase contained herein.

(e) 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 131.010(6).

(f) 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;

(5) Health; and

(6) Life; and [-]

(7) Other.

(g) All revenues derived from all categories of insurance where the insurance license fee is ten (10) percent shall be divided so that [four]-six ([4]6) percent of the [eight]-ten ([8]10) percent insurance license fee shall be deposited in the general fund of the city for general municipal expenses and purposes, and all revenue derived from the remaining insurance license fee shall be deposited in a

separate fund designated as the "Downtown Development and Revitalization Fund", as set forth hereinbelow. All revenues derived from the license fee imposed on premiums received on health insurance policies other than those issued to individuals (health insurance as defined by KRS 304.5-040 shall be deposited in the general fund of the city for general municipal expenses and purposes.)

(h) There is hereby established a "Downtown Development and Revitalization Fund" into which all revenues designated for this fund in subsection (f)g) hereinabove and received, shall be deposited by the finance department on no less than a quarterly basis. All expenditures from the fund shall be used exclusively for capital projects, expenses, and other improvements associated with the development and revitalization of downtown Owensboro, Kentucky as approved by the board of commissioners through the annual and amended budget process.

Section 2. That Chapter 16, Article II, Section 16-22 of the Owensboro

Municipal Code be, and hereby is, amended, effective July 1, 2017, to read as follows:

Sec. 16-22. Levy of license fee - General

(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. The occupational license tax shall be measured by one and [thirty-nine]seventy-eight hundredths (1.[39]78) percent of:

- (1) 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 net profits 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 under the following circumstances or to the following persons or business entities:

- (1) Any bank, trust company, combined bank and trust company, or combined 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. 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 net profits derived from the non-public service activities apportioned to the city;

(5) Persons whose sole business activity is the manufacture of and/or sale of alcoholic beverages. Persons engaged in the business of manufacturing and/or selling alcoholic beverages are required to file a return, but may exclude the portion of their gross receipts derived from such manufacturing and/or sale of alcoholic beverages. Any gains derived from business activities other than the manufacturing and/or sale of alcoholic beverages, such as the sale of equipment shall be included in the taxable amount, but not included in total sales with calculating the percentage;

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

(7) Any Compensation received by an employee of a Permittee under Section 16-32 of this Article, which is earned while performing services for the Permittee at the physical location of the permitted booth or like space during the effective term of the permit.

Section 3. That Chapter 16, Article II, Section 16-23 of the Owensboro Municipal Code be, and hereby is, amended, effective July 1, 2017, to read as follows:

Sec. 16-23. Same - Employees.

(a) Employees in General: The license fee is imposed on both residents and nonresidents of the city at the rate of one ~~and seventy-eight [thirty-nine]~~ hundredths (1.~~39~~⁷⁸) percent of all salaries, wages, commissions and other compensation earned for work done or services performed or rendered in the city. The following are subject to the license fee:

(1) Salaries, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

a. As an officer, agent or employee, or both, of a corporation (including a corporation of the first or nonprofit class), joint stock association or joint stock company;

- b. As an officer, agent or employee (as distinguished from a partner or member) of a partnership, limited partnership or any other form of unincorporated enterprise owned by one (1) or more persons;
 - c. As an agent employee (as distinguished from the proprietor) of a business, trade or profession, conducted by an individual owner;
 - d. As an officer, agent or employee (whether elected or appointed, enlisted or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit thereof.
 - e. As an officer, agent or employee of any other entity.
- (2) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:
- a. Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece-work rates; and
 - b. Whether paid by an individual, copartnership, association, corporation (including a corporation of the first or nonprofit class), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit, or any other entity.
- (3) Commissions received by an employee, whether directly or through an agent, and whether in cash or in property, for services rendered, regardless of how computed or by whom paid. (If amounts received as a drawing account exceed the commissions earned, the tax is payable on the amounts received.) If such commissions are included in the net earnings of a trade, business or profession regularly carried on by such individual and, therefore, subject to license fee under section 16-24, they shall not again be separately taxed.
- (4) Fees, unless such fees are properly included as part of the net profits of a trade, business, profession or enterprise regularly carried on by the individual and such net profits are subject to tax under section 16-24. Corporations are permitted but not required to withhold and remit the license fee on compensation paid to directors, provided that such corporations submit the 1099 information indicating that such payments are directors' fees, and state the amount of the license fee withheld.
- (5) Other compensation will be treated as follows:
- a. Subject to the license fee:
 - 1. Tips received by waiters and others: Tips received are subject to the license fee and will be reported in the same manner as regular earnings.

2. Vacation and/or holiday benefits: Payments made to employees by an employer as vacation wages are subject.

3. Separation payments: Payments made to employees by an employer at the time of a voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the license fee.

4. Disability, sickness, accident benefits: Payments made by an employer under a disability, sickness and accident plan are subject to the license fee.

b. Not subject to the license fee:

1. Old-age or retirement payments: Periodical payments, commonly recognized as old-age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment, are not subject to the license fee.

2. Unemployment compensation: Unemployment compensation payments by the state or any other agency are not subject.

3. Death benefits: Death benefits payable by an employer 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.

4. Benefits arising under the workers' compensation act: Amounts received by employees under the workers' compensation act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability, are not subject to the license fee.

5. Employee under age sixteen: Compensation paid to employees who have not attained age sixteen (16) on or before the date such income is earned. Earnings of employees shall be subject on the day that age sixteen (16) is attained.

6. Domestic servants: Because of the undue burden of administration, no license fee shall be required of domestic servants employed in private homes.

7. Sickness, disability or accident benefits: Payments made by a third party payer to an employer, for disbursement to an

employee, are not required to have occupational license fee withheld.

c. Applicability of the foregoing to employees whose compensation is not wholly subject: In the case of individuals whose compensation is earned for services performed both within and without the city and who receive subject payments as set forth in the foregoing rules and regulations, they are subject to the license fee in the same proportion that services performed within the city bear to their total employment time.

(b) Specific Groups of Employees:

(1) Musicians and entertainers:

a. Contractor: The term "contractor" means that individual musician through whom the purchaser and the musician negotiate the contract of services and the performance thereof. The contractor may or may not perform actual musical service under a contract which he or she has negotiated.

b. Purchaser of Music: The person, partnership, organization or association for whom or for which the musical services are to be performed or furnished and who exercises an employer's control over the conduct of the musicians; for example, hotels, cafes, adult entertainment establishments, taprooms, restaurants, theaters, clubs, radio stations and radio sponsors.

c. Responsibility for Withholding fee: When a contract for the purchase of music has been executed between a purchaser and a contractor, the musician shall be deemed to be the employee of the purchaser. The purchaser shall be the person responsible for withholding the license fee from the wages paid to the musicians, and the remittal thereof to the director of finance.

d. Entertainers Other Than Musicians: An entertainer other than a musician is usually engaged by a purchaser through a booking agent. The booking agent, once the contract of employment has been executed, does not exercise an employer's control over the entertainer. The owner of a hotel, cafe, adult entertainment establishment, taproom, restaurant, theater, or club or any place which furnishes entertainment to the public or to its patrons, shall be deemed the person liable as an employer of entertainers. Such employer must deduct the license fee from the compensation paid to the entertainer and remit the same to the director of finance.

(2) Insurance Agents, General: Individuals engaged in the sale of insurance may be either employees or independent contractors.

a. Where the individual is subject to the direct control of another as to the manner of his or her conduct and is paid a fixed fee, he or she is considered an employee and the amount of the license shall be withheld at the source.

b. Where the individual is not under the direct control of another and may conduct the sale as he or she sees fit, receiving his or her payment in the form of commission from the sale, he or she is considered an independent contractor and shall file his or her own return and make payment as in independent contractor subject to the provisions of Section 16-24.

(c) Withholding of License Fee:

(1) It is the duty of each employer who employs one (1) or more employees on a salary, wage, commission or other compensation basis, to deduct monthly or more often, at the time of the payment of such compensation, the license fee on such salary, wage, bonus, incentive payment, commission or other compensation due by the employer to the employee. The license fee shall be deducted by the employer from all compensation paid to employees for activities in the city. However, the mere fact that the license fee is not withheld will not relieve the employee of the responsibility of filing a return and paying the fee on the compensation received. A nonresident employer, either maintaining in the city an office, business address, or doing business therein, or who is otherwise subject to service of legal process, is subject to the withholding provisions of this section.

(2) Where an employee receives compensation for personal services rendered or performed partly within and partly outside the city, the withholding agent shall deduct and withhold that portion of the compensation which is earned within the city in accordance with the following rules of apportionment:

a. If the licensee is a traveling salesperson, agent or other employee, whose compensation on the basis of commissions depends directly on the volume of business transacted by him or her, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the city bears to the volume of business transacted both within and outside of the city.

b. The deducting and withholding of personal service compensation of all other employees, including officers of corporations, shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within

the city bears to the total number of working days employed both within and outside the city.

c. If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the usual basis of compensation, apportionment shall be made in accordance with the facts, and the fee deducted and withheld accordingly. With respect to each such employee or group of employees similarly or identically circumstanced, the employer shall furnish the director of finance a detailed statement of facts.

d. The occasional entry into the city of an employee, who performs the duties for which he or she is employed entirely outside the city, but enters the city for the purposes of reporting, receiving instructions, accounting, etc., incidental to his or her duties outside the city shall not be deemed to take such employee out of the class of those rendering their services entirely outside the city.

(d) Returns of License Fee Withheld and Payment:

(1) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational license tax calculated under Section 16-22 of this article. The return and payment to be made on account of deductions by employees from salaries, wages and other compensation of employees shall be made on a monthly or quarterly basis. Employers withholding three hundred dollars (\$300.00) or more license fee per quarter must file on a monthly basis upon notification from the director of finance or his or her designee. Withholding less than three hundred dollars (\$300.00) license fee per quarter shall require the employer to file on a quarterly basis. Employers filing status may not be changed unless permission is granted by the director of finance.

(2) The employer shall make a required return and pay to the city the full amount of the license fee so deducted or withheld with respect to compensation paid to all employees in accordance with the following due dates:

a. Returns required to be filed monthly shall be due on or before the fifteenth day of the month next following each monthly period, except the return for the last month of the calendar year, which shall be due on January 31.

b. Returns required to be filed quarterly shall be due on or before the last day of the month following each quarterly period.

(3) Every employer who fails to withhold or pay to the city any sums required by this article 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.

(4) If the due date of a return falls on a Saturday, Sunday, or legal holiday, the return due date shall be the next succeeding day which is not a Saturday, Sunday, or legal holiday. If the envelope bearing a return is postmarked within forty-eight (48) hours of midnight of the due date, interest and penalties shall not be assessed. Returns submitted other than by mail must be received on or before the return due date.

(5) 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.

(6) 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.

(7) 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.

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

(9) 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 (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.

(10) Notwithstanding paragraphs (8) and (9) of this subsection, every employee receiving compensation in the city subject to the tax imposed under Section 16-22 of this article shall be personally liable for any amount due.

(11) Every employer is deemed to be a trustee of the city in collecting and holding the license fee required under this article to be withheld, and the funds so collected by such withholding are deemed to be trust funds and are held in trust by the employer as a legal fiduciary for payment to, and benefit of, the city. Every such employer required to deduct and withhold the license fee at the source is liable directly to the city for the payment of such fee whether actually collected by such employer or not.

Section 4. That Chapter 16, Article II, Section 16-24 of the Owensboro Municipal

Code be, and hereby is, amended, effective July 1, 2017, to read as follows:

Sec. 16-24. Same - Net business profit.

(a) General: In the case of an individual, partnership, association, fiduciary or other entity engaged in the conduct, operation or prosecution of any business, profession or other enterprise, there is imposed an annual license fee being the greater of ~~forty-seven~~seventy-five dollars (\$~~47~~75.00) or one and ~~thirty-nine~~seventy-eight hundredths (1.~~39~~78) percent of the net profits of such business, profession or other enterprise, if and to the extent conducted in or derived from activity in the city. Net profit shall be apportioned to the city by multiplying the net profit by a fraction, the numerator of which is the payroll factor plus the sales factor, and the denominator of which is two (2). If either factor is absent, then the business apportionment percentage shall be equal to the remaining percentage. A factor is not deemed to be absent merely because none of the licensees receipts arose inside the city or because none of the wages paid by the licensee were for services performed or rendered inside the city.

(1) Determination of Fee: After determining such business apportionment percentage, the license fee shall be determined by applying that percentage to the entire net profits of the license payer wherever derived, thus arriving at the subject net profit, and computing the annual license fee of the resultant subject net profit.

(2) 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:

- a. Separate accounting;
- b. The exclusion of any one (1) or more of the factors;
- c. The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the city; or
- d. The employment of any other method to effectuate an equitable allocation and apportionment of net profit

(3) 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.

(4) Wages earned either within or outside the city may not be used as a credit against the net profits of a business.

(5) 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.

(6) 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 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.

(b) Apportionment: Sales Factor

(1) 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.

(2) 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 the purchaser is the United States government.

(3) Sales revenues, other than revenue 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.

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

(5) For purposes of this subsection "sales" shall mean all gross sales less returns and allowances for the sale of merchandise, services, or both, computed by the method of accounting properly utilized by the licensee for federal income tax purposes.

a. Sales revenue may include not only payment in cash or property but also the gross credits to or charges by the licensee, under its normal and usual accounting practices, for the performance of work or services. For example, a plant, factory or other establishment in the city which processes material or manufactures parts for other plants or factories owned by the licensee, and which may receive credit for the performance of such services only by bookkeeping entries, may be chargeable under this section with the gross amount of such entries in applying the formula discussed hereunder. Furthermore, such bookkeeping entries may be considered in lieu of cash or property payment in determining the net profits of any license payer under this article, even though the apportionment formula may not be used by or be applicable to the licensee. However, whenever such gross receipts or charges are included in computing the net profits of any licensee who pays a license fee thereon under this article, the same licensee shall not be twice subject in the same fee period by the separate imposition of a fee upon such gross credits or charges.

b. Sales revenue from work done or services performed within the city are allocable to the city and subject under this article. All amounts so received, credited or charged by a licensee in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of the licensee, by subcontractors or by any other persons. It is immaterial where such amounts were payable or where they were received. Commissions or fees received by the licensee are allocated to the city if the services for which the commissions were paid were performed in the city. If the license payer's services for which

commissions or fees were paid were performed for the license payer by salespersons or other agents or employees attached to or working out of the city place of business of the licensee, the licensee's services will be deemed to have been performed in the city. Where a lump sum is received by the licensee in payment for services within and without the city, the amount attributable to services within the city is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without the city, or by some other reasonable method approved by the director of finance. Full details must be submitted with the licensee's report.

c. All business receipts earned by the city licensee within the city are allocable to the city. Business receipts are not considered to have been earned by the licensee in the city solely by reason of the fact that they were payable in or actually received in the city. Receipts from the sale of real property held by the licensee as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the city if the real property was situated in the city. Receipts from sales of intangibles included in business capital are business receipts and are allocable to the city if the sales were made in the city or through a regular place of business of the licensee in the city.

(c) Apportionment: Payroll Factor

(1) 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. Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the licensee.

(2) 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 taxpayers reported

percentages under this subsection, the taxpayer shall maintain adequate records. In any such case, where an employee performed services both within and without the city, the amount treated as compensation for services performed within the city shall be deemed to be:

- a. In the case of an employee whose compensation depends directly on the volume of business secured by him or her, such as a salesperson on a commission basis, the amount received for the business attributable to his or her efforts within the city;
- b. In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his or her services within the city bears to the value of all services; and
- c. In the case of an employee compensated on a time basis, the proportion of the total amount received by him or her which the working time employed in the city bears to the total working time.

(d) New Business License Fee:

(1) Every person conducting a business as defined in this article shall obtain an occupational business license from the license fee division before commencement of such business, the non-refundable fee for which shall be ~~forty-seven~~ seventy-five dollars (\$~~47~~ 75.00) dollars, except that no fee shall be required of minors of the ages of sixteen (16) and seventeen (17).

(2) This fee will be credited in full to the account of the license payer and applied against the annual net business profit fee the first time it regularly becomes due. If there is no activity, the first time filer may carry a credit of the fee over to the next year, but shall receive no refund.

Section 5. That Chapter 16, Article II, Section 16-25 of the Owensboro Municipal

Code be, and hereby is, amended, effective July 1, 2017, to read as follows:

Sec. 16-25. Same - Other subject activities.

(a) Sales Revenue Received From Real Estate: Any individual or sole proprietor who earns on an annual, calendar or fiscal year basis, five thousand dollars (\$5,000.00) or less in sales revenue from the rental or lease of any and all types of real estate shall not be subject to the net profits tax of one and seventy-eight ~~[thirty-nine]~~ hundredths (1.39~~78~~) percent imposed by this article. Any individual or business entity that receives on an annual, calendar or fiscal year basis, more than five thousand dollars (\$5,000.00) in sales revenue from the rental or lease

of any and all types of real estate shall be subject to the net profits tax imposed by this article on all sales revenue derived therefrom.

(b) All corporations, partnerships, joint ventures or other business entities engaged in the rental or lease of real estate shall be considered to be engaged in a business activity and shall be subject to the city's net profits tax imposed by this article.

(c) The manner of acquisition of real estate, i.e., purchase, gift, inheritance, fiduciary or as a fiduciary mortgagee in possession, etc., does not exempt any person or business entity from the net profits tax imposed by this article.

(d) Any and all non-exempt lease or rental income received from any property located within the corporate limits of the City of Owensboro, Kentucky, shall be subject to the net profits tax imposed by this article, regardless of the personal residence of the property owner.

(e) Trusts: Whenever a trust estate is engaged in an enterprise, activity or business which is productive of sales revenue, that sales revenue shall be subject to the license fee.

(f) Trading in Securities: Where a person engages in the buying and selling of stocks, bonds and other types of securities, and such transactions are not isolated and few, but are extended so as to constitute an activity, the net profits therefrom are subject to the license fee.

(g) Fiduciaries:

(1) A fiduciary is a person who holds in trust, property, moneys or properties, to which another has a beneficial title or interest, or who receives and controls sales revenue for another person or persons.

(2) Money received by a fiduciary is sales revenue, where a fiduciary is regularly engaged in a business or profession as a fiduciary, or is engaged in a business or profession commonly regarded as being incidental or collateral thereto, for example, an attorney-at-law, real estate agent, etc.

(h) Independent Contractor: An independent contractor is a person who, while performing services for another, is not under the direction and control of such other person as to the results to be accomplished by the work and as to the details and means by which that result is accomplished, such as authors and professional people. The sales revenue received by such persons is subject to this license fee.

(i) On or before February 28, unless written request for extension is made to and granted by the license fee division, following any calendar year, every entity making non-employee payments within the city shall file with the license fee division, in the form prescribed by the director of finance, an information return disclosing non-employee payments of six hundred dollars (\$600.00) or more made for services performed within the city. For convenience of the payer, the

information return may be made in one (1) of two (2) ways at the election of the reporting entity, as follows:

(1) May submit a copy of applicable Federal Form 1099(s), if the amount of non-employee payments made for services performed within the city are separately stated.

(2) Furnish a list of non-employee payments made, which list shall set out the name, mailing address, social security number or Federal I.D. number of the non-employee, the total payments made to the non-employee and the amount of non-employee payment made that were for services that were performed within the city.

Section 6. That Chapter 16, Article II, Section 16-25 of the Owensboro Municipal

Code be, and hereby is, amended, effective July 1, 2017, to read as follows:

Sec. 16-26. - Exemption to net profit license fee.

(a) Minister of religion; and

(b) Persons under age sixteen (16); and

(c) Permittee under section 16-32 unless the permittee is otherwise subject to a [new]-net profit licensee fee on net profits for activity outside of the permitted period and location.

Section 7. That Chapter 16, Article II, Section 16-35 of the Owensboro Municipal

Code be, and hereby is, amended, effective July 1, 2017, to read as follows:

Sec. 16-35. Revenue to be deposited in separate fund

(a) All revenue derived from one and [six]-forty-five hundredths (1.[06]45) percent of the one and seventy-eight [thirty-nine] hundredths (1.[39]78) percent annual license fee shall be deposited in the general fund of the city for general municipal expenses and purposes, and all revenue derived from thirty-three hundredths (.33) percent of the one and seventy-eight [thirty-nine] hundredths (1.[39]78) percent annual license fee shall be deposited in a separate fund designated as the "Capital Projects and Stormwater Drainage System Fund", as set forth hereinbelow.

(b) Capital Projects and Stormwater Drainage System Fund: There is hereby established a "Capital Projects and Stormwater Drainage System Fund" into which all revenues designated in subsection (a) hereinabove and received, shall be deposited by the finance department on a monthly basis. All expenditures

from the fund shall be used exclusively for capital projects and stormwater drainage maintenance and improvements approved by the board of commissioners through the annual and amended budget process. For purposes of this subsection, "capital projects" include the acquisition, construction, reconstruction, replacement or improvement to land, buildings, equipment, facilities or other fixed assets.

Section 8. The Mayor, City Manager, City Attorney, Director of Finance and Support Services, and their designees as per applicable ordinance are hereby authorized to execute all contracts, deeds, titles, purchase orders, agreements and other documents deemed necessary to facilitate the budget amendment contained herein.

Section 9. All Ordinances, Resolutions, Orders and approvals, or parts thereof, in conflict with the provisions of this Ordinance, are repealed to the extent of any such conflict.

Section 10. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

INTRODUCED AND PUBLICLY READ ON FIRST READING, this 15th day of May, 2017.

PUBLICLY READ AND APPROVED ON SECOND READING, this 17th day of May, 2017.

/s/ Thomas H. Watson
Thomas H. Watson, Mayor

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ATTEST:

/s/ Beth Cecil

Beth Cecil, City Clerk

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