

**AN ORDINANCE OF THE CITY OF ERLANGER IN KENTON COUNTY KENTUCKY REPEALING IN THE ENTIRETY CHAPTER 110 RELATED TO OCCUPATIONAL LICENSES AND CREATING AN ENTIRELY NEW CHAPTER FOR OCCUPATIONAL LICENSES**

**WHEREAS** the City of Erlanger wishes to repeal and replace Chapter 110 of the Erlanger Code of Ordinances in its entirety, and;

**WHEREAS** the City of Erlanger desires to create an entirely new code section for the application and regulation of Occupational Licenses.

**NOW THEREFORE**, be it ordained by the City of Erlanger in Kenton County Kentucky as follows:

*Strikethrough portions are to be deleted; underlined portions are to be added as required by KRS 83A.060(3)*

**A Complete Repeal of Chapter 110 and Ordinance No. 2295 in its entirety**

That the City of Erlanger wishes to repeal in its entirety Chapter 110 of the Erlanger Code of Ordinances and Ordinance No. 2295.

**B Creation of New Code Section for Application and Regulation of Occupational Licenses**

**Section 1.0 DEFINITIONS**

As used herein, the following words and phrases have the meanings indicated:

**1.1** The word "anybody" means any human being, and any combination thereof, in the form of partnership, corporation, joint venture, unincorporated association, or otherwise.

**1.2** The words "applicable laws" mean the constitutions, statutes, ordinances, rules, regulations and other laws of the United States, Commonwealth of Kentucky, County of Kenton and any other governmental entity or agency having jurisdiction.

**1.3** The word "business" means any and all franchises, trades, occupations, professions or other businesses within the meaning and context of K.R.S. 92.280, K.R.S. 92.281 and Section 181 of the Kentucky Constitution.

**1.4** The words "Business Regulatory License" mean a license required by the City of Erlanger, pursuant to the police power thereof, for the purpose of regulating business activities and operations within the City of Erlanger.

**1.5** The words "Business Regulatory License fee" mean a fee required by the City of Erlanger for each Business Regulatory License, pursuant to K.R.S. 82.082 and the police power thereof, to provide the funds necessary to pay the expenses of regulating business activities and operations within the City of Erlanger, including, without limitation, the expense of issuing Business Regulatory Licenses.

**1.6** The word "City" means the City of Erlanger, in Kenton County, Kentucky.

**1.7** The word "nobody" means not anybody, or no human being, or any combination thereof, in the form of a partnership, corporation, joint venture, unincorporated association, or otherwise.

**1.8** The words "Occupational License Fee" mean a tax for revenue, pursuant to the taxing authority of the City of Erlanger, including, without limitation, the authority therefore established by K.R.S. 82.082, K.R.S. 92.280, K.R.S. 92.281 and Section 181 of the Kentucky Constitution, wherein it is sometimes identified and referred to as a power to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions.

## **Section 2.0 PURPOSE**

The purpose of this ordinance is to both regulate and tax those engaged in franchises, trades, occupations, professions and other businesses. The purpose of the business regulatory license fees and the occupational license fees imposed and levied by this chapter is to fund the general operating expenses of the city, including, without limitation, police, fire, emergency medical, public works and administrative services; provided, however, that the use of one-half percent of the occupational license fees for employees shall be and is hereby restricted to infrastructure and capital asset expenditures, for which a special fund shall be established.

## **Section 3.0 BUSINESS REGULATIONS**

### **3.1 Requirements**

Everybody who is engaged in any franchise, trade, occupation, profession or other business in the City, other than those who are only so engaged as employees, shall obtain an annual Business Regulatory License for that franchise, trade, occupation, profession or other business; and pay to the City a Business Regulatory License fee in the amount of either Fifty Dollars (50.00) or that part of a multi-jurisdictional occupational permit fee, collected by Kenton County Fiscal Court and allocated to the city, pursuant to the provisions of an inter-local agreement between the City and Kenton County Fiscal Court and some other cities therein, for a single multi-jurisdictional annual occupational permit fee, in the fee amount established by Kenton County Fiscal Court.

Each business operating at a single building, parcel or location must acquire and maintain a Business Regulatory License. Businesses requiring separate licenses include the following:

- a. There is a separate entryway for the separate businesses.
- b. There is separate accounting or bookkeeping by the owner for the separate business.
- c. There are separate employees for the separate businesses.

Each business requiring a Business Regulatory License shall file annual and quarterly returns (if applicable) with Kenton County Fiscal Court, and remit required business taxes, described in section 4.0.

### **3.2 Prohibitions**

Nobody, other than those who are only engaged as employees in the City, shall conspire, cause, permit, promote, allow, aid, assist, encourage or engage in any franchise, trade, occupation, profession or other business in the City for which the annual Business Regulatory License required hereby has not been issued. Any person failing to obtain and upon issuance, maintain, a business license as required above shall not be permitted to form or continue their business within the City.

### **3.3 Form and Content of Annual Business Regulatory License and Application**

The form and content of the annual Business Regulatory License required by this ordinance and the application for it shall be determined by Kenton County Fiscal Court.

#### **3.3.1 Signature to Application**

Each application for an annual Business Regulatory License required by this ordinance shall be signed by the applicant or an authorized representative of the applicant, who shall attest to the truth of the statements therein, with knowledge that any false statements constitute

perjury, for which the signatory may be prosecuted and punished according to law; and such signatures shall be notarized according to law.

### **3.3.2 Payment of fees for New or renewed applications**

Each application for an annual Business Regulatory License required by this ordinance shall be presented to Kenton County Fiscal Court, along with both the Business Regulatory License fee and any Occupational License Fee that is due from the applicant. No new application for a Business Regulatory License or renewal of such license shall be accepted or issued by Kenton County Fiscal Court without payment of the Business Regulatory License fee and any Occupational License Fee due from the applicant. In the event a license is issued or renewed without payment of any necessary fees, the City Administrator may initiate a revocation or suspension of that license until fees are paid by the applicant.

### **3.3.3 Review of application by City Administrator**

Each application for an annual occupational license required hereby shall be immediately forwarded to and reviewed by the City Administrator according to the following standards within thirty (30) days after actual receipt by Kenton County Fiscal Court:

(1) When the applicant, or employees of the applicant, are required to have any license, permit, degree, certification or other similar document pursuant to the provision of any applicable law for the conduct of or employment in the business which is the subject of the application; the license, permit, degree, certification or other similar document shall have been duly issued to the applicant or employees of the applicant prior to the issuance of the occupational license. The applicant shall provide documentary evidence of the issuance satisfactory to the City Administrator.

(2) The criminal record of the persons named or identified in the application shall be considered to the extent such record includes conviction of a felony, a misdemeanor for which imprisonment or other confinement was a possible penalty, any other crime in which moral turpitude was involved; or any other crime which was directly related to a business of the type which is the subject of the application. In determining if a conviction was directly related to a business, the City Administrator shall consider:

- (a) The nature and seriousness of the crime for which the person was convicted.
- (b) The relationship of the crime to the purpose of the regulation of the business.
- (c) The relationship of the crime to the ability, capacity and fitness required to perform the duties and discharge the responsibilities of the operation of the business.
- (d) The extent to which the person convicted has been successfully rehabilitated.

(3) The City Administrator shall consider whether the business is of a type that the operation, unless closely supervised, has a probability of generating or resulting in criminal activity or adversely affecting the health, safety, morals and welfare of occupants or residents of adjoining property, the citizens and residents of the city, or will constitute a nuisance.

(4) The City Administrator shall consider the business history of the applicant including:

- (a) Whether the persons named and identified in the application have been denied or had suspended or revoked a similar license by the city or any other city, county or state and the reasons, therefore.
- (b) Whether complaints have been received by the city about the business practices or responsibility of the persons named and identified in the application, and the disposition of those complaints.

(5) The City Administrator shall consider whether the persons named and identified in the application are indebted to the city for delinquent taxes, assessments, liens, fines, penalties, or similar obligations.

(6) The City Administrator shall consider whether the business and the proposed location complies with all applicable laws, including, without limitation, land subdivision and use,

zoning, building construction and maintenance, and fire prevention and life safety codes and regulations.

#### **3.3.4. Approval of Application:**

Unless the City Administrator conditionally approves or disapproves the application for an occupational license within thirty (30) days after the application has been received by or on behalf of the city, Kenton County Fiscal Court shall issue the occupational license that is the subject of the application and mail it to the applicant at the address indicated in the application; and, thereafter, the applicant may engage in the franchise, trade, occupation, profession, or other business described in the application, but only at the address thereof indicated in the application, until that occupational license expires or is suspended or revoked according to the provisions of this chapter. The business license shall become effective upon notice served upon the licensee or posted on the premises affected.

#### **3.3.5 Conditional approval of application.**

In the event that the City Administrator conditionally approves an application for an occupational license, the City Administrator shall notify the applicant thereof and the reasons therefore by mail to the address of the applicant indicated in the application, along with, a notice that the license will be issued by Kenton County only upon receipt by the City Administrator of a written signed acceptance by the applicant of the conditions to be performed prior to the issuance of the license. The notice shall also state that if the City Administrator does not receive the acceptance within such time, the application will thereby be summarily disapproved.

The City Administrator may issue a conditional approval as a reinstatement of a revoked or suspended business license. Conditional approval may be granted after all debt is paid and violations are corrected. The City Administrator may approve a conditional approval for businesses that have had past violations. Businesses may be issued a conditional approval for 12 months to demonstrate future compliance prior to being issued a standard license. The following conditions may be placed on a business:

Conditions:

1. Post bond with surety in a reasonable amount of based on the annual license fee for the following year
2. Prepay 90% of the annual license fee
3. Demonstrate reduction in criminal calls from location over a specified time frame
4. Continued compliance with zoning and code enforcement violations
5. Requirement that the applicant permit periodic inspections of certain parts of the premises to observe the building, business practices and business records.
6. A requirement that certain alterations be made in the premises before a specified date

#### **3.3.6 Disapproval of application.**

In the event that the City Administrator disapproves an application for a new or renewal occupational license required hereby, Kenton County Fiscal Court shall notify the applicant of that denial and the reasons therefore identified by certified mail, return receipt requested, to the address of the applicant indicated in the application, with a refund of any anticipated city occupational license fee paid with the application, and a notice of the procedure established in this chapter for an appeal from the denial of that application.

#### **3.3.7 Occupational license revocation or suspension by the City Administrator.**

(1) Any occupational license required hereby may be revoked or suspended by the City Administrator for any period of time determined by the City Administrator to be reasonable and appropriate for any one (1) or more of the following circumstances:

Any conditions or considerations, which, had they existed at the time of issuance, or had the City Administrator had knowledge of those circumstances, would have been grounds for denial.

- (a) Any false or intentionally misleading statement or information provided in the license application.
- (b) Any failure or refusal to perform or abide by any of the conditions of a conditional license.
- (c) The criminal conviction of any person named or identified in the license application of a felony, a misdemeanor for which imprisonment or any other confinement is a possible penalty, any other crime in which moral turpitude is involved, or any other crime which directly relates to a business of the type for which the license was issued. However, the consideration of such a criminal conviction shall include:
  - 1. The nature and seriousness of the crime for which the person was convicted.
  - 2. The relationship of the crime to the purposes of the regulation of the business.
  - 3. The relationship of the crime to the ability, capacity and fitness required to perform the duties and discharge the responsibilities of the operation of the business.
  - 4. The extent to which the person has been successfully rehabilitated.
- (d) The revocation, suspension or expiration without renewal of any license, permit, degree, certification or similar document which is required by any applicable law for the conduct of or employment in the business for which the license was issued.
- (e) Where the business is a disorderly house, or to permit lewd, indecent or immoral acts to be committed therein, or on the premises adjacent thereto and under the control of the person conducting such business, or to permit on such premises or adjacent premises any lewd, boisterous or obscene conversations, sounds or other noises, or to permit such premises to be used for the purposes of prostitution, assignation or other immoral or illegal purposes or otherwise to become a nuisance.
- (f) The violation of any applicable law in the conduct of the business by any person engaged therein.
- (g) Violations of applicable laws by any person within the business premises of the licensee, or under the control Thereof.

### **3.3.8 Procedure for notice business of license revocation or suspension**

(1) Upon receipt by the City Administrator of evidence of any of the circumstances of revocation or suspension described within Section 3.3.7 above with regard to any application for occupational license or anybody mentioned therein, the City Administrator or his or her designee shall attempt informally to contact the applicant at either the address set forth within the application or the telephone number set forth therein, and, if the contact attempt is successful:

- (1) disclose said circumstances to the applicant,
- (2) indicate to the applicant that if the circumstances are shown to the City Administrator to be accurate, then the occupational license may be revoked or suspended by the City Administrator,
- (3) request that the applicant confirm or deny the truth of the circumstances, and
- (4) obtain any explanation or evidence from the applicant with regard to the presence or absence of the circumstances. One (1) of the attempts to contact the applicant shall consist of a letter of notification sent to the applicant at the address set forth within the application by mail.

(2) The City Administrator has the authority to revoke or suspend an occupational license after his or her attempts to contact the application are deemed unsuccessful, or if no response is received within ten (14) calendar days of the mailing the letter. The City Administrator may provide additional time for the business to make corrections to circumstances of revocation or suspension, if the applicant provides a written plan to improve those conditions.

(3) After considering the evidence of the existence of the circumstances described at Section 3.3.7 the City Administrator may revoke or suspend an occupational license if there is probable cause that any one (1) or more of the circumstances described within Section 3.3.7 exists.

(4) The remedy of revocation or suspension of an occupational license under this section shall be in addition to the imposition of any other remedy or penalty prescribed under this chapter or other applicable law.

(5) No such license shall be suspended or revoked without proper legal notice to the business setting forth the allegations leading to the suspension or revocation, as outlined in the section above. Upon such notice, the business must cease operations within the City. The City shall take necessary steps to enforce the business closure.

### **3.4 Appeals of Decisions from City Administrator or his Designee**

**3.4.1** Any conditional approval or disapproval of an application for a Business Regulatory License required by this ordinance, or any suspension or revocation of any such license may be appealed to the Mayor of the City of Erlanger, by filing with the City Clerk/Tax Collector, within thirty (30) days after the conditional approval, disapproval, revocation or suspension:

**3.4.2** A written notice of the appeal; and

**3.4.3** A copy of the conditional approval, disapproval, revocation or suspension that is the subject of the appeal; and

**3.4.4** A statement why there should be an approval without conditions, or no disapproval, revocation or suspension; and

**3.4.5** An appeal fee in the sum of two hundred dollars (\$200.00), to provide for the expenses of conducting a due process hearing in regard thereto.

**3.4.6** In such an appeal, a de novo due process hearing in regard to the suspension or revocation shall be conducted by the Mayor, or by a hearing officer appointed by the Mayor, who shall file a record with the Mayor, with a written recommendation regarding findings of fact, conclusions of law and a decision based thereon. Within ninety (90) days after the date the appeal was filed, the Mayor shall issue a written decision in regard thereto, including findings of fact, conclusions of law and a decision based upon a record of the due process hearing; and the appellant shall be notified thereof by certified mail, return receipt requested, at the address thereof indicated in the application for the license. Unless an appeal from the decision of the Mayor is filed in the court having jurisdiction thereof within thirty (30) days after the decision of the Mayor, the decision of the Mayor shall become final.

### **3.5 Expiration Date**

Unless an earlier expiration date is provided therein, all Business Regulatory Licenses required hereby shall expire at midnight on the 15<sup>th</sup> day of the fourth month after the end of the fiscal year of the licensee.

## **Section 4.0 BUSINESS TAXATION**

### **4.1 Levy and Imposition**

For the purpose of providing funds for the general operating expenses of the City and the municipal services and functions provided thereby, and subject to the provisions of KRS 67.750 through 67.795, and except as provided in section 4.4 of this ordinance, an Occupational License Fee is hereby levied and imposed upon everybody engaged in any franchise, trade, occupation, profession or other businesses in the City, for the privilege of that engagement.

## **4.2 Rate**

The Occupational License Fee that is levied and imposed by this ordinance is at the rate of:

### **4.2.1 Employees**

1.5 % of all of the gross compensation earned by an employee for labor, work or services provided in the city.

### **4.2.2 Those Not Employees**

0.075% of the taxable gross receipts of everybody, other than employees, who are engaged in any franchise, trade, occupation, profession or other business in the City, with a maximum of Forty Thousand Dollars (\$40,000.00) per calendar year.

## **4.3 Apportionment of Gross Receipts**

Pursuant to the authority of K.R.S. 67.753 (4), it is hereby determined that the apportionment provisions of K.R.S. 67.753 do not fairly represent the extent of the engagement in the City of those, other than employees, who are engaged in any franchise, trade, occupation, profession or other business both within and outside of the City ; and, accordingly, the following described property factor is hereby added to the payroll factor and the sales factor provided in K.R.S. 67.753 for the apportionment of the gross receipts of those, other than employees, who are engaged in any franchise, trade, occupation, profession or other business both within and outside of the City.

**4.3.1** The property factor is a fraction, the numerator of which is the average value of the taxpayers real and tangible personal property owned or rented and used in the city during the computation period, and the denominator of which is the average value of all of the taxpayer's real and tangible personal property owned or rented and used anywhere during the computation period. In the determination of the property factor:

(a) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate which is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

(b) The average value of property shall be determined by averaging the values at the beginning and ending of the computation period, but the City Administrative Officer may require the averaging of monthly values during the computation period if reasonably required to reflect properly the average value of the taxpayer's property.

**4.3.2** The proportion of the total gross receipts everywhere of those, other than employees, who are engaged in any franchise, trade, occupation, profession or other business both within and outside of the City that are subject to the Occupational License Fee established by this ordinance, shall be determined by multiplying the total gross receipts thereof everywhere by the quotient of the total of the payroll factor and the sales factor described in K.R.S.67.753 (2) and (3), and the property factor described in the previous section 4.3.1, that the franchise, trade, occupation, profession or other business had in the City during the tax period, divided by the total number of those factors that that the franchise, trade, occupation, profession or other business had in the City during the tax period . The total number of those factors that the franchise, trade, occupation, profession or other business had in the City during the tax period will always be either 1, 2 or 3. For example, if the franchise, trade, occupation, profession or other business:

(1) Had only the sales revenue factor in the City, during the tax period, without either the property factor or the payroll factor in the City, the total number of those factors that the franchise, trade, occupation, profession or other business had in the City during the tax period would be 1; or

(2) Had both the sales revenue factor and the payroll factor in the City, during the tax period, without the property factor in the City, the total number of those factors that that the

franchise, trade, occupation, profession or other business had in the City during the tax period would be 2; or

(3) Had the sales revenue factor, and the payroll factor, and the property factor in the City, during the tax period, the total number of those factors that the franchise, trade, occupation, profession or other business had in the City during the tax period would be 3.

#### **4.4 Exemptions from Taxation**

The following franchises, trades, occupations, professions and other businesses are exempted from the Occupational License Fee levied and imposed in sections 5.1 and 5.2 of this ordinance:

**4.4.1** The employment of domestic servants in private homes.

**4.4.2** Organizations that have been determined to be exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

**4.4.3** Owners of their principal and primary residence, who let or lease no more than one separate residential unit in that principal and primary residence.

#### **4.5 Penalties and Interest:**

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

Every employer who fails to file a return or pay the tax for quarterly occupational license fees on or before the due date is 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).

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.

Every tax imposed by this chapter, 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.

The city may enforce the collection of the occupational tax due under this chapter and any fees, penalties, and interest as provided in this chapter by civil action in a court of appropriate

#### **Section 5.0 CIVIL PENALTIES**

In addition to penalties and interest imposed on taxes due to the City, the City Administrator may issue civil penalties for violations of this ordinance by business entities. Each separate violation, for each day, of this ordinance is hereby classified as a civil offense, for which:



**5.1** The maximum civil fine required by K.R.S. 65.8808(2)(b) that may be imposed for each separate violation of this ordinance, is hereby established as \$500.00; and

**5.2** The specific civil fine required by K.R.S. 65.8808(2)(c) that will be imposed for each separate offense and violation of this ordinance if the person who has committed the violation and offense does not contest a citation therefore, is hereby established as \$100.00.

**5.3** An enforcement officer may, in lieu of immediately issuing a civil citation, give notice that the violation of this ordinance shall be remedied within a specific period of time.

## **Section 6.0 CRIMINAL PENALTIES**

In addition to the penalties prescribed in this Section 5, any business entity or employer who willfully fails to make a return, willfully makes a false return, or 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.

Each separate violation, for each day, of this ordinance shall be a misdemeanor for which everybody convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of \$500.00 as set forth in K.R.S. 534.050 (2) (a) or a term of imprisonment not to exceed the maximum period of twelve (12) months as set forth in K.R.S. 532.090 (1), or both.

### **C Provisions Severable**

The provisions of this Ordinance are severable; and the invalidity of any provision of this Ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

### **D Conflicting Ordinances Repealed**

All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

### **E Effective Date**

This ordinance shall be effective as soon as possible according to law.

### **F Publication**

This ordinance shall be published in summary pursuant to K.R.S. 83A.060 (9).

Adopted this 5th day of April, 2022.

First Reading- March 1, 2022

Second Reading- April 5, 2022    Votes Cast: 11 Yes, 0 No

JESSICA FETTE, MAYOR

DATE: April 5, 2022