

ORDINANCE NO. 2295

AN ORDINANCE OF THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, IMPOSING REGULATIONS AND TAXES ON THOSE ENGAGED IN FRANCHISES, TRADES, OCCUPATIONS, PROFESSIONS AND OTHER BUSINESSES; AND REPEALING ORDINANCES 1774, 1780, 1974, 1992, 2019, 2038, 2073 AND 2087.

WHEREAS, in order to comply with the provisions of KRS 67.750 to 67.790, certain revisions to existing ordinances of the City of Erlanger in regard to the regulation and taxation of those engaged in franchises, trades, occupations, professions and other businesses in the City are necessary; and it is more expeditious to repeal those ordinances in their entirety, and impose by this ordinance the same regulations and taxes, but in a manner that the assessment, payment and collection of those taxes and the administration of those regulations is more efficient;

NOW, THEREFOR, BE IT ORDAINED by the City of Erlanger, in Kenton County, Kentucky, as follows:

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.

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 and allocated to the city, pursuant to the provisions of an inter-local agreement between the City and Kenton County and some other cities therein, for a single multi-jurisdictional annual occupational permit fee of one hundred seventy-five dollars (\$175.00), which the Mayor is hereby authorized and directed to sign on behalf of the city.

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.

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 the City Administrative Officer; provided, however, that the application shall include:

3.3.1 Sufficient information for the identification of the persons involved in the franchise, trade, occupation, profession or other business; and,

3.3.2 The computation of the annual Occupational License Fee imposed by this ordinance; and

3.3.3 Sufficient information and inspection authorization for a determination by the City of compliance by the licensee with all applicable laws; and

3.3.4 The name in which the business will be conducted; the address of the real estate upon which the business will be conducted, and the mailing address of the business if different from the location; and the business telephone number and the state tax identification numbers of the business.

3.3.5 The name, address, date of birth and Social Security number of each owner of the business and each partner, officer or director, if any.

3.3.6 The name, residence address and telephone number of a duly authorized representative of the business who is responsible for operating and managing the business in the City, and a night emergency number at which some responsible representative of the business can be reached in case of an emergency.

3.3.7 A full description of the business operations to be conducted.

3.3.8 The date on which the business began or will begin operations in the City.

3.3.9 The accounting period of the business.

3.3.10 The number of employees working or expected to be working for the business in the City during the license year.

3.3.11 A statement describing the circumstances of each denial, suspension or revocation of any Business Regulatory License for any person named or identified in the application.

3.3.12 A statement describing the circumstances of each conviction of any person named or identified in the application of a felony, misdemeanor for which imprisonment or other confinement was a possible penalty, any other crime in which moral turpitude was involved, or any other crime directly related to a business similar to that which is the subject of the application.

3.3.13 A statement as to whether any license, permit, degree, certification or similar document is required by any applicable law for the conduct or employment in the business.

3.3.14 A statement as to whether there are hazardous material kept at the business premises and the location thereof, and whether there are pets, guard dogs or other animals usually kept therein and any other information which the applicant believes would be necessary or helpful to emergency personnel responding to a call to said premises.

3.3.15 The gross receipts and hereinafter described property factor, sales factor, and payroll factor of the business for the previous calendar year.

3.3.16 Such additional information that the City Administrative Officer determines to be reasonably necessary.

3.3.17 A warning in the following or similar language:

“WARNING: Statements in this application shall be made under oath, by affirmation or any other legally authorized manner of attesting to the truth of such statements, with the signatures notarized, according to law; and any false statements made herein shall be punishable according to law; and may be cause for denial of the application or the revocation of any Business Regulatory License issued pursuant thereto.”

3.3.18 Information Incorporated By Reference

All information from any previous application for an annual Business Regulatory License required by this ordinance, which continues to be accurate, may be incorporated by reference into subsequent annual applications for the same license by the same applicant.

3.3 Application Process

3.4.1 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.

3.4.2 Payment of Fees

Each application for an annual Business Regulatory License required by this ordinance shall be presented to the City Clerk/Tax Collector, or any designee thereof, along with both the Business Regulatory License fee and any Occupational License Fee that is due from the applicant. No application for a Business Regulatory License shall be accepted or received by the City Clerk without payment of the Business Regulatory License fee and any Occupational License Fee due from the applicant.

3.4.3 Review of Applications

Each application for an annual Business Regulatory License required by this ordinance that is received and accepted by the City Clerk/Tax Collector shall be immediately referred to the City Administrative Officer, who shall review it according to the following standards within thirty (30) days after the receipt and acceptance thereof by the City Clerk/Tax Collector.

3.4.3.1 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 Business Regulatory License. Documentary evidence of the issuance satisfactory to the City Administrative Officer shall be provided by the applicant.

3.4.3.2 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 Administrative Officer 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.

3.4.3.3 The City Administrative Officer 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.

3.4.3.4 The City Administrative Officer 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 of Erlanger or any other City, county or state and the reasons therefor.

(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.

3.4.3.5 The City Administrative Officer shall consider whether the persons named and identified in the application are indebted to the City for delinquent taxes, assessments, fines or similar obligations.

3.4.3.6 The City Administrative Officer 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 regulations.

3.4.3.7 After review of the application in conformity with Section 3.4.3 of this ordinance, the City Administrative Officer shall notify the City Clerk/Tax Collector, or any designee thereof, of either:

3.4.3.8 The approval of the application.

3.4.3.9 The approval of the application conditionally; but if the application is approved conditionally, the City Administrative Officer shall determine and require those conditions that are reasonably necessary to accomplish the intent of this ordinance, including, without limitation:

(a) A requirement that the applicant post bond with surety acceptable to the City Administrative Officer in a reasonable amount determined by the City Administrative Officer to ensure compliance.

(b) A requirement that a debt to the City be paid before a specified date.

(c) A requirement that the applicant permit periodic inspection of certain parts of the premises or of certain records.

(d) A requirement that certain alterations be made in the premises before a specified date.

3.4.3.10 The disapproval the application.

3.4.4 Notice to the Applicant

Unless the City Clerk/Tax Collector receives a written notice from the City Administrative Officer, within thirty (30) days after an application for a Business Regulatory License required by this ordinance has been referred to the City Administrative Officer for review pursuant to Section 3.4.3 of this ordinance, that the application was either conditionally approved or disapproved, the City Clerk/ Tax Collector, or the designee thereof shall issue the Business Regulatory 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 Business Regulatory License expires or is suspended or revoked according to the provisions of this ordinance.

3.4.5 Conditional Approval of Application

In the event that the City Clerk/Tax Collector receives a written notice from the City Administrative Officer, within thirty (30) days after an application for a Business Regulatory License required by this ordinance has been referred to the City Administrative Officer for review pursuant to Section 3.4.3 of this ordinance, that the application was conditionally approved, the City Clerk/Tax Collector shall notify the applicant thereof and the reasons therefore identified by the City Administrative Officer, by certified mail, return receipt requested, to the address of the applicant indicated in the

application, along with a notice that the license will be issued by the City Clerk/Tax Collector only upon receipt by the City Clerk/Tax Collector 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 acceptance is not received by the City Clerk/Tax Collector within such time, the application will thereby be disapproved.

3.4.6 Disapproval of Application

In the event that the City Clerk/Tax Collector receives a written notice from the City Administrative Officer, within thirty (30) days after an application for a Business Regulatory License required by this ordinance has been referred to the City Administrative Officer for review pursuant to Section 3.4.3 of this ordinance, that the application was disapproved by the City Administrative Officer, the City Clerk/Tax Collector shall notify the applicant of that denial and the reasons therefore identified by the City Administrative Officer, 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 ordinance for an appeal from the denial of that application.

3.4.7 Business Regulatory License Revocation or Suspension

3.4.7.1 Any Business Regulatory License required by this ordinance may be revoked or suspended by the City Administrative Officer for any period of time determined by the City Administrative Officer to be reasonable and appropriate for any of the following reasons; but only after a due process evidentiary hearing in regard thereto, for which a notice has been sent to the licensee at the address indicated in the licensee's application, by certified mail, return receipt requested, at least ten (10) days prior to the hearing:

3.4.7.2 Any false or intentionally misleading statement or information provided in the license application.

3.4.7.3 Any failure or refusal to perform or abide by any of the conditions of a conditional license.

3.4.7.4 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:

(a) The nature and seriousness of the crime for which the person was convicted.

(b) The relationship of the crime to the purposes 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 has been successfully rehabilitated.

3.4.7.5 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.

3.4.7.6 The violation of any applicable law in the conduct of the business by any person engaged therein.

3.4.7.7 Violations of applicable laws by any person within the business premises of the licensee, or under the control thereof

3.4.7.8 The revocation or suspension of a Erlanger Business Regulatory License pursuant to Erlanger ordinance shall be in addition to the imposition of any other penalty prescribed by Erlanger ordinance or any other applicable law.

3.5 Appeals

3.5.1 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:

3.5.2 A written notice of the appeal; and

3.5.3 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 15th day of the fourth month after the end of the fiscal year of the licensee.

3.6 Kenton County Fiscal Court

The executive authority of the City may contract with the Fiscal Court of Kenton County, Kentucky, for the performance of the duties imposed by this ordinance on the City Clerk/Tax Collector

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% 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 is 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 that the franchise, trade, occupation, profession or other business had in the City during the tax period would be 3.

4.4 Exemptions

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 Administrative Provisions

The provisions of this ordinance shall be administered and enforced by the City Administrative Officer, who is hereby authorized to promulgate any additional regulations in regard thereto which are not inconsistent with any state statute, or any ordinance of the City, or any executive order of the Mayor.

4.6 Purpose of Occupational License Fee

The purpose of the Business Regulatory License fees and the Occupational License Fees imposed and levied by this ordinance is to fund the general operating expenses of the City, including, without limitation, police, fire, emergency medical, public works and administrative services.

Section 5.0 COLLECTION

The Business Regulatory License fees and Occupational License Fees imposed and levied by this ordinance shall be received and collected by the City Clerk/Tax Collector or by the Fiscal Court of Kenton County, Kentucky, with which the executive authority of the City is hereby authorized to contract for those services.

Section 6.0 CIVIL PENALTIES

Each separate violation of this ordinance is hereby classified as a civil offense, for which:

6.1 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

6.2 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 therefor, is hereby established as \$100.00;

6.3 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 7.0 CRIMINAL PENALTIES

Each violation 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.

Section 8.0 – 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.

Section 9.0 – CONFLICTING ORDINANCES REPEALED

Erlanger ordinances 1834, 1888, 1992, 2007, 2019, 2038, 2087 and all other ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 9.0 – EFFECTIVE DATE

This ordinance shall be effective at midnight on the evening of December 31, 2007, after the enactment and publication thereof, according to law.

Section 10.0 - PUBLICATION

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

THOMAS L. ROUSE, MAYOR