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**SMITHS GROVE CITY COMMISSION
ORDINANCE NUMBER 2019-003
Amended Occupational License Tax**

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE TAX REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND BUSINESS ENTITIES CONDUCTING BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN CITY OF SMITHS GROVE, KENTUCKY

WHEREAS, the City Council desires to comply with the requirements of KRS 67.750 to 67.795 and deems it necessary and desirable that certain changes be made to existing ordinances imposing occupational license taxes on persons and business entities conducting businesses, occupations, and professions within City, so that the assessment and payment of Occupational License Taxes can be administered more efficiently.

Now, therefore, be it ordained by the Smiths Grove City Commission, Kentucky that Ordinance 2018-002 is hereby repealed, amended and re-adopted in full to read as follows:

Ordinance No. 2019-003 is hereby enacted and shall read in full as follows:

Sections:

<u>1</u>	<u>Definitions</u>
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§ 1 - Definitions

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

KRS 67.750

- (1) *“Business entity” means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;*
- (2) *“Business” means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. “Business” shall not include a board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions as recognized by the Internal Revenue Service. “Business” shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.*
- (3) *City means the City of Smiths Grove, Kentucky.*

KRS 67.750

- (4) *“Compensation” means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:*
 - (a) *Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and*
 - (b) *Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;*

KRS 67.775

- (5) *“Conclusion of the federal audit” means the date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity’s federal income tax return become final and unappealable;*

KRS 67.775

- (6) *“Final determination of the federal audit” means the revenue agent’s report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service;*

KRS 67.750

- (7) *“Fiscal year” means fiscal year as defined in Section 7701(a) (24) of the Internal Revenue Code;*

KRS 67.750

- (8) *“Employee” means any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.*

KRS 67.750

- (9) *“Employer” means employer as defined in Section 3401(d) of the Internal Revenue Code;*

Following is the definition of Section 3401 (d) of the IRC

“Employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:

- (a) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term “employer” means the person having control of the payment of such wages, and
- (b) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term “employer” means such person;

KRS 67.750

- (10) *“Internal Revenue Code” means the Internal Revenue Code as defined in KRS 67.750 (7).*

KRS 67.750

(11) *“Net profit” means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:*

- (a) *Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;*
- (b) *Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;*
- (c) *Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;*
- (d) *Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and*
- (e) *Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;*

(12) *“Person” shall mean every natural person, whether a resident or non-resident of the city. Whenever the word “person” is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof;*

(13) *“Return” or “Report” means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the city.*

KRS 67.750

(14) *“Sales Revenue” means receipts from the sale, lease, or rental of goods, services, or property;*

KRS 67.750

(15) *“Tax district” means any county or city with the authority to levy net profits or occupational license taxes;*

KRS 67.750

(16) *“Taxable net profit” in case of a business entity having payroll or sales revenue only within the city means net profit as defined in subsection (11) of this section;*

KRS 67.750

- (17) *“Taxable net profit” in case of a business entity having payroll or sales revenue both within and without the city means net profit as defined in subsection (11) of this section, and as apportioned under Section (4) of this Ordinance; and*

KRS 67.750

- (18) *“Taxable year” means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed.*

§ 2 - Occupational License Application Required

Every person or business entity engaged in any trade, occupation, or profession, or other activity for profit or anyone required to file a return under this ordinance in the City of Smiths Grove shall be required to report and/or complete and execute the questionnaire prescribed by the City of Smiths Grove. Each person shall be required to report and/or complete a separate questionnaire for each separate business before the commencement of business or in the event of a status change, other than change of address. Licensees are required to notify the City of Smiths Grove of changes of address, or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

- (1) The following money receipts are not deemed to be “salaries, wages, commissions, and other compensations and net profits” within the meaning of this ordinance, to wit:
- (a) Old age or Retirement payments
 - (b) Periodical payments made to persons retired from services after reaching a specified age or after a started period of employment are not subject to the license fee.
 - (c) Disability, sickness and accident plans are not subject to the license fee. Unemployment compensations payments by the Commonwealth of Kentucky or any agent are not subject to the license fee.
 - (d) 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.
 - (e) Benefits arising under Workmen’s Compensation Act as compensation for disabilities sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability are not subject to the City of Smiths Grove net profit tax.
- (2) Insurance: General Individuals engaged in the sale of insurance may be either employees or independent contractors, a determination which shall be governed by generally

accepted principles of the accounting profession and the rules and regulations of the Internal Revenue Service.

- (a) Agencies: if an insurance office is located inside the City of Smiths Grove, all net profits are subject to the Smiths Grove net profit tax. Every agency making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by the city. Amounts withheld shall be paid to the city in accordance with Section (3) of this ordinance. Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the city, and pay to the city, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the city.
 - (b) Self-employed Insurance Agents based in a Smiths Grove office: All commissions, bonuses, etc are subject to the Smiths Grove net profit tax.
 - (c) Group Insurance Commissions: Commissions paid on the sale of contracts of group insurance are subject if the group is located within the City of Smiths Grove as a unit without regard to the residence of the writing agent.
 - (d) Bonuses and Insurance Payments Subject to Net Profit Tax: That proportionate part of all bonuses and incentive payments received by an agent, which bears the same ratio to the total amount of commissions received by him on policies sold to residents, bears to the total amount of commissions received by him on all policies sold to both residents and non-residents is subject to the Net Profit Tax.
- (3) Income received from Real Estate:
- (a) All individuals who derive income from any real estate must pay a business license/registration fee to do business in the City of Smiths Grove.
 - (b) The rent received from warehouses, apartment houses, hotels, motels, office buildings, storages facilities and structures rented for any commercial or business operation shall constitute a subject activity, and the net income there from is subject to the tax imposed by this ordinance.
 - (c) Rents from single dwellings or single apartments or other rental property not specifically set out above shall constitute a subject activity and the net income there from is subject to the fee imposed by this ordinance.
 - (d) All corporations engaged in the rental or real estate of partnership organized for that purpose shall be considered to be engaged in a subject activity.
 - (e) When any property falls within the classifications above given, the manner of its acquisitions, i.e., purchase, gift, inheritance, fiduciary or as fiduciary montage in position, etc., does not affect the subject of the income derived there from.
 - (f) Where the property is located within the city limits, the silence of the beneficiary is immaterial.
 - (g) Brokers or Agencies: If a real estate office is located inside the City of Smiths Grove, all net profits from that location are subject to the Smiths Grove net profit tax.

- (h) Real Estate Agents: Real estate agents are Independent Contractors and must have a license in order to conduct business within the City of Smiths Grove. All property sold within the city is subject to the net profit tax. For the sale of property outside the city, the determining factors shall be the amount of time spent in an office, at a place of public records, and at the place of closing the sale if any or all of these are within the City of Smiths Grove. Only time spent outside the city is not subject to the Net Profit Tax.
 - (i) Real Estate Agents based in a Smiths Grove Office: All commissions, bonuses, etc., are subject to the Smiths Grove net profit tax. EXCEPTION: All individuals who sell real estate may exclude from the Smiths Grove net profit tax work time actually spent outside the City of Smiths Grove. Detailed records must be kept and submitted to the city.
- (4) Peddlers: Persons who sell manufactured items door-to-door, or from a truck or automobile will each be required to pay a business license/registration fee. The charge for the business license/registration fee will be \$25.00 per business or person. Both the fee is for the calendar year or portion thereof. Person(s) or businesses who fails to obtain a business License/registration fee, shall be subject to penalties, interest, and fines as outlined in Section 12, subsection 1-8 of this ordinance.
- (5) Non-city resident who conduct yard/tag sales within the city limits must pay a business license registration fee to the City of Smiths Grove. Business license/registration fee expires December 31 of each year. EXCEPTION: City resident/property owner does not have need to obtain a business license/registration fee; however if any other party joins a city resident in the yard sale/tag sale they must have a business license/registration fee.
- (6) 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 result to be accomplished by the work, as to the details and means to the result is accomplished, such as authors, professional persons, plumbers, electricians, seamstresses, laundresses, tailors, registered nurses. The income received by such person is subject to the Net Profit Tax. *(Note: Consequences of treating an employee as an independent contractor. If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker. See Internal Revenue Code section 3509 for more information.*
- (7) Trusts: Whenever a trust estate is engaged in enterprise, activity or business, which is productive of income, said activity or business shall be considered subject to the Net Profit Tax.
- (8) Capital Gains: Capital losses are not deductible under this ordinance. Gains from the sale of a business asset (4797) are subject to this ordinance and losses from the sale of a business asset (4797) are deductible under this ordinance.

(9) 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 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 excises an employer’s control over the conduct of the musicians; for example, hotels, cafes, 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 musicians, and the remittal thereof to the occupational tax department.
- (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, café, 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 occupational tax department.

(10) Other Compensation:

- (a) Tips received are subject to the Net Profit Tax and will be reported in the same manner as an independent contractor.
- (b) Vacation and holiday benefits are subject to the payroll tax and the tax shall be withheld and paid by the employer.
- (c) Payments made to employees by an employer at the time of the voluntary or involuntary separation of the employee from the service of the employer are subject to the payroll tax and the tax shall be withheld and paid by the employer.

(11) Other individuals: Any individual who works both inside the City of Smiths Grove and outside the City of Smiths Grove must submit at the time of filing a net profit tax return, a detailed record of work time spent outside the City of Smiths Grove.

§ 3 - Occupational License Tax Payment Required

(1) *Except as provided in subsection (2) and subsection (5) 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 1 % of:

- (a) 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, whether temporary, transient, or permanent without regard to home office location or address of payroll issuer.*
- (b) The net profit from business conducted in the city by a resident or nonresident business entity or \$ 25.00, whichever is greater.*

Minimum and Maximum Liability

KRS 67.773

A tax district may impose minimum and maximum tax liabilities for the tax on net profits.

- (2) All partnerships, S corporations, and all other entities where income is “passed through” to the owners are subject to this ordinance. The occupational license tax imposed in this ordinance is assessed against income before it is “passed through” these entities to the owners.*

KRS 67.763

- (3) 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.*

KRS 67.765

- (4) If a business entity makes, or is required to make, a federal income tax return, the occupational license tax shall be computed for the purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.*
- (5) The occupational license tax imposed in this section shall not apply to the following persons or business entities:*
 - (a) Any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;*
 - (b) Any compensation received by precinct workers for election training or work at election booths in state, city, and local primary, regular, or special elections;*

§ 4 – Apportionment

KRS 67.753

- (1) *Except as provided in subsection (4) of this section, net profit shall be apportioned as follows:*
- (a) *For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit by a fraction, the numerator of which is the payroll factor, described in subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is two (2); and*
 - (b) *For business entities with sales revenue in more than one (1) tax district, by multiplying the net profit by the sales factor as set forth in subsection (3) of this section.*
 - (c) *For the purposes of subsections (1) thru (4) of this section, the business entity shall file an apportionment form provided by the City of Smiths Grove.*

KRS 67.753

- (2) *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.*

KRS 67.753

- (3) *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.*
- (a) *The sales, lease, or rental of tangible personal property is in the city if:*
 - 1. *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*
 - 2. *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.*
 - (b) *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.*
 - (c) *Sales revenue from the sale, lease, or rental of real property is allocated to the tax district where the property is located.*

KRS 67.753

- (4) *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.*
- (5) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the city, the license tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the city. The license tax shall be computed by obtaining the percentage which the compensation for work performed or services rendered within the city bears to the total wages and compensation paid or payable. In order for the city to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records.

§ 5 - Employers to Withhold

KRS 67.780

- (1) *Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by the city. Amounts withheld shall be paid to the city in accordance with Section (3) of this ordinance.*

KRS 67.783

- (2) *Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the city, and pay to the city, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the city.*

KRS 67.783

- (3) *Every employer who fails to withhold or pay to the city any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the city*

for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.

KRS 67.783

- (4) *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.*

KRS 67.783

- (5) *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.*

KRS 67.783

- (6) *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.*

KRS 67.785

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

KRS 67.785

- (8) *The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this ordinance shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid to one or more employees of any 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 of any person; provided that the personal and individual liability shall apply to each or 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 who had no authority to collect, truthfully account for, or pay over any tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.*

KRS 67.785

- (9) *Every employee receiving compensation in the city subject to the tax imposed under Section (3) of this ordinance shall be personally liable for the tax notwithstanding the provisions of subsections (7) and (8) of this section. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer. If an employer fails to or is not required to withhold, report, or pay the License Fee it shall become the duty of the employee to file with the city. The payment required to be made by an employee, can be made quarterly, for the periods ending March 31st, June 30th, September 30th, and December 31st of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers that do not withhold, license fee must annually during the month of January of each year, make a return to the City of Smiths Grove, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full-time employees, part-time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.*

§ 6 - Returns Required

KRS 67.768

- (1) *All business entities' returns for the preceding taxable year shall be made by April 15 of each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns shall be supplied by the city.*

KRS 67.768

- (2) *Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational license tax return with the city. Whenever, in the opinion of the city, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the city may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. The city may also require copies of reports of adjustments made by the federal government.*

KRS 67.760

- (3) *Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as the city from time to time may prescribe. Whenever the city deems it necessary, the city may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability the business entity.*

KRS 67.760

- (4) *The city may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.*

KRS 67.773

- (5) *The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to the city at the time prescribed for filing the occupational license tax return, determined without regard to any extension of time for filing the return.*
- (6) It shall be the responsibility of persons who make Federal Form 1099 "non-employee compensation" payments to natural persons other than employees for services performed within the city, to maintain records of such payments and to report such payments to the city. Said payments must be reported on by remitting Federal Form 1099 by February 28 of the year following the close of the calendar year in which the non-employee compensation was paid. If a business entity or person is not required to remit Federal Form 1099 to the IRS, including but not limited to payments less than \$600, they are still liable to remit the equivalent information to the county or city. The information required to be reported by said licensee shall include:
- (a) Payer's name, address, social security and/or Federal identification number.
 - (b) Recipient's name and address.
 - (c) Recipient's social security and/or Federal identification number.
 - (d) Amount of non -employee compensation paid in the calendar year.
 - (e) Amount of non -employee compensation earned in the City of Smiths Grove for the calendar year.

§ 7 - Extensions

KRS 67.770

- (1) *The city may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.*

KRS 67.770

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

Quarterly Estimated Payments:

KRS 67.755

- (3) *Every business entity, other than a sole proprietorship, subject to a net profits or occupational license tax levied by the city shall make quarterly estimated tax payments on or before the fifteenth day of the fourth, sixth, ninth and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars (\$5,000).*

KRS 67.755

- (4) *The quarterly estimated tax payments required under subsection (3) of this section shall be based on the lesser of:*
- (a) *Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;*
 - (b) *Twenty-five percent (25%) of the preceding full year taxable year tax liability; or*
 - (c) *Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable years' tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars (\$20,000).*

KRS 67.755

- (5) *Any business entity that fails to submit the minimum quarterly payment required under subsection (4) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of the quarterly payment required under subsection (4) of this section from the earlier of:*
- (a) *The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (4) of this section; or*
 - (b) *The due date of the annual return. A fraction of a month is counted as an entire month.*

KRS 67.755

(6) *The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the {county or city} or any first taxable year in which a business entity's tax liability exceeds five thousand dollars (\$5,000).*

KRS 67.758

(7) *At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.*

§ 8 - Refunds

KRS 67.788

(1) *Where there has been an overpayment of tax under Section (5) of this ordinance, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under Section (5) by the employer;*

KRS 67.788

(2) *Unless written application for refund or credit is received by the city from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed;*

KRS 67.788

(3) *An employee who has compensation attributable to activities performed outside the city, based on time spent outside the city, whose employer has withheld and remitted to this city, the occupational license tax on the compensation attributable to activities performed outside the city, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the city may confirm with the employer the percentage of time spent outside the city and the amount of compensation attributable to activities performed outside the city prior to approval of the refund.*

§ 9 - Federal Audit Provisions

KRS 67.775

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

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

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

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

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

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

KRS 67.775

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

KRS 67.775

- (3) The city may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.*

§ 10 - Administrative Provisions

KRS 67.778

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this ordinance.*

KRS 67.778

- (2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the city, whichever is the later, except that:*
- (a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the city, the limitation contained in this subsection shall be extended accordingly.*
- (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.*
- For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.*

KRS 67.778

- (3) *The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in the city.*

§ 11 - Information to Remain Confidential

KRS 67.790

- (1) *No present or former employee of the city shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the city or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the city from testifying in any court, or from introducing as evidence returns or reports filed with the city, in an action for violation of a the city tax laws or in any action challenging the city laws.*
- (2) The city reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city the reciprocal right to obtain information form the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the city may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.
- (3) In addition, the city is empowered to execute similar reciprocity agreements as described in subsection (2) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance.

§ 12 – Penalties

KRS 67.790

- (1) *A business entity subject to tax on net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:*
- (a) *Fails to file any return or report on or before the due date prescribed for filing or as extended by the city; or*
- (b) *Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.*

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).

KRS 67.790

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

KRS 67.790

- (3) *In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, 1% per month or fraction thereof, for a total of 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.*

KRS 67.790

- (4) *Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.*
- (5) *The city may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.*

KRS 67.790

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

KRS 67.790

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

KRS 67.790

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

KRS 67.790

(9) *Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both*

KRS 67.790

(10) *Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year, or both.*

§ 13- Use of Occupational License Tax

The taxes collected hereunder are for the general operation of the City of Smiths Grove and all monies collected hereunder shall be paid into the general fund.

§ 14 - Severability

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

MAYOR DAVID L. STIFFEY

DATE

ATTEST:

CITY CLERK
NANCY A. HOWARD