

CITY OF STANFORD, KENTUCKY
STANFORD CODE OF ORDINANCES
TITLE XI: BUSINESS REGULATIONS
CHAPTER 110: GENERAL LICENSING PROVISIONS
ORDINANCE #: 220.23C
ORDINANCE CORRECTING, AMENDING AND CONSOLIDATING ALL AMENDMENTS TO
OCCUPATIONAL LICENSES ORDINANCE 220.23

ORDINANCE NO. 220.23C

ORDINANCE CORRECTING, AMENDING AND CONSOLIDATING OCCUPATIONAL
LICENSES

WHEREAS, the City of Stanford adopted an Occupational License Fee Ordinance in 1997, and

WHEREAS, this ordinance has been amended several times, and

WHEREAS, there are certain clerical or typographical errors in amendments to the original ordinance, and

WHEREAS, the City wishes to correct and fully incorporate numerous amendments, now

BE IT ORDAINED BY THE CITY OF STANFORD AS FOLLOWS:

Section 1-1. Definitions.

The following words when used in this [article] ordinance, shall have the meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

Association shall mean a partnership, limited partnership, joint venture, or any other form of unincorporated enterprise, owned, or engaged by two (2) or more persons.

Business shall mean an enterprise, activity, or undertaking of any nature conducted for gain or profit, or conducted by an individual, co-partnership, association or any other entity, but shall not include the usual activities of boards of trade, chambers of commerce, trade associations, or unions, or other associations performing the services usually performed by trade associations or unions; funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, education or civic purposes, or for the preventions of cruelty to children or animals, for clubs or fraternal organizations operated exclusively for social, literary, educational or fraternal purposes where no part of the earnings or income or receipts for such units, groups, or associations inures to the benefit of any private shareholder or individual.

Business receipts shall mean the sum total of gross receipts from sales plus gross credit or charges for work done and performed or services rendered.

Corporation shall mean a corporation or joint stock association organized under the laws of the United States, this state, or any other state, territory, or foreign country or dependency.

Director of Finance shall mean the director of finance of the city, the city clerk, or the Code Enforcement Officer when the city does not have a director of finance.

Employee shall mean and include any person engaging in or following any trade, occupations, profession or activity within the meaning of occupations, etc., in this section.

Employer shall mean and include any individual, person, limited liability company, partnership, association, corporation, governmental body or unit or administration or agency, or any other entity, who or that employs one (1) or more persons a salary, wage, commission, or other compensation basis.

Fiduciary shall mean a person who holds in trust, property, monies, or properties, to which another has a beneficial title or interest, or who receives and controls income for another person.

License shall mean and include any person required to file a return or to pay a license fee under this chapter.

Net profits shall mean the net income for the operation of a business or enterprise after provision for all costs and expenses incurred in the conduct of a business, shall be the same as reported for federal income tax purposes excluding items exempted under this chapter, without deduction for federal, state, or local taxes based on net income.

Occupations, trade, profession or other activity shall mean and include the doing of any kind of work, the rendering of any kind of personal service or the holding of any kind of positions or job within the city, by any clerk, laborer, tradesman, manager, official or other employee, including any nonresident of the city, who is employed by an employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services the legal relationship of employer and employee, including also a partner of the firm or an officer of the firm or a corporation if such partner of a firm or corporation or officer thereof receives a salary for his personal services rendered in the business of such firm or corporation, and shall also include and mean the holding of any kind of office or position, either by election or appointment, by the federal, state, county, or city officer or employee where the services of such official or employee are rendered within the city.

Payrolls shall mean the total wages, salaries and other personal monetary compensation.

Person shall mean any natural person, copartnership, limited liability company, fiduciary, association or corporation. Whenever the word "person" is used in any 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.

Salaries, wages, commissions, and other compensations shall mean and include the total gross amount of all salaries, wages, commissions, bonuses, share of net partnership receipts or withdrawals,

corporate dividends paid in lieu of salaries or wages, and any other payment or other consideration which a person receives from or is entitled to, for any work done, or personal services rendered in any trade, occupation, or profession or any other activity, including all deductions whether for tax, insurance or other. Amount paid to traveling salesmen or other workers as allowance or reimbursement for travel or other expenses, incurred in the business of the employer except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to his employer are excluded from the foregoing definition.

Section 1-2. Levy on gross salaries and other compensation.

(a) There is hereby levied and imposed an annual license fee upon all persons, in the city for the privilege of engaging in such occupations, trades, professions, or other activities, which license fee shall be measured by and be equal to (Beginning Amendment 07/01/2018) 1.15 percent of the gross salaries, wages, commissions, and other compensations earned by [such] those persons for work done or services performed or rendered in the city and (Beginning Amendment 70/01/2018) .65% of the net profits of all businesses, professions, or occupations from activities conducted in the city.

(b) Where such salaries, wages, commissions, and other compensations and net profits are earned for work done or services performed or rendered both within and without the city, such license fees shall be measured by such part of the salaries, wages, commissions and other compensations and net profits as is earned as a result of work done or services rendered or performed in the city. Such license fees shall be computed by obtaining the percentage which the compensation or net profits for work performed or services rendered within the city bears to the total compensation earned.

Section 1-3. Levy on net profits of business entities.

(a) In the case of an individual, partnership, association, corporation, fiduciary, or other entity engaged in the conduct, operation, prosecution of any business, profession, or other enterprise, there is imposed an annual license fee of .65 percent of the net profits of such business, profession, or other enterprise, if and to the extent, conducted in or derived from activity in the city.

(b) A business entity within the meaning of this section which has a branch office and/or store, warehouse, or other place in which the entity's business is transacted, located in the city, shall be considered to be conducting, operating, prosecuting or carrying on a trade, business, profession, enterprise, undertaking, or other activity to the full extent of the sum total of all transactions, originating or consummated in by or through the city branch, office,

store, warehouse, or other place of business including:

- (1) Billings made on such transactions;
- (2) Services rendered;
- (3) Shipments made;
- (4) Goods, chattels, merchandise, etc. sold or
- (5) Commissions, fees or other remuneration or payments earned as determined by sub-section (d).

The absence of a branch office, store, warehouse, or other permanent place of business within the city shall not exempt or render nonlicensable the net profits of any trade, business, profession, or enterprise or other activity on which a license fee is imposed by this article.

(c) In the case of partnership, association, or other unincorporated business owned by one (1) or more persons, the license fee, generally, shall be upon the partnership, association, or business enterprise as an entity and not ordinarily upon the partners or members thereof.

(d) In determining the proportion or amount of the subject net profits of a business entity doing business within the city, the business entity shall use and apply the business allocation percentage formula set forth in section 1-6. For explanation of formula, see subsection (e) below.

(e) The business allocation percentage is computed as follows:

(1) The license payer shall use the formula set forth in section 1-6 to compute the percentage of the entire net profits, derived from activities both within and outside the city, which is subject under the provision and to determine the license fee payable to the city.

(2) If the license payer was doing business in the city during such period, the business allocation percentage shall be computed on the basis of two (2) following factors:

- a. Business receipts within and without the city;
- b. Payrolls within and without the city.

The business allocation percentage is computed by determining the percentages a. which city business receipts (see subsection (e) (6) below) bear to licensee's entire business receipts wheresoever derived, including those derived from the city; and b. which payrolls paid by the licensee with the city bears to licensee's entire payroll wheresoever paid, including city payrolls; adding together the two (2) percentages so arrived at, and dividing the total by two (2).

(3) However, if one (1) of the factors, receipts or payrolls is missing, the remaining percentage is the business allocation percentage. A factor is not to be deemed

missing merely because the expenditures of the licensee for payrolls for the gross receipts of the licensee, are found to be situated, incurred or received entirely within or entirely without the city.

- (4) After determining the business allocation, the license fee shall be determined by applying that percentage to the entire net profits of the license payer wheresoever derived, (thus arriving at the subject net profit), and computing .65 percent of the resultant subject net profit.
- (5) In case it shall appear to the director of finance that any agreement, understanding or arrangement exists between the license payer and any other person, whereby the activity, business, income, or capital of the license payer is improperly or inaccurately reflected, the director of finance may adjust items of income, deductions, and capital, in computing any allocation percentage, provided any income directly traceable thereto is also excluded for the entire net income, so as equitable to determine the license fee.
- (6) The percentage of the license payer's business receipts within the city is determined by ascertaining the taxpayer's business receipts within the city during the period covered by the license payer's total business receipts within and without the city during such period.
- (7) Receipts from the following are allocable to the city:
 - a. Sales of the licensee's tangible personal property, delivered to the buyer within the corporate limits of the city;
 - b. Work done and performed in the city;
 - c. Rentals from property situated in the city where the rental of such property is a business activity as defined in Sec 1-4 (a) (2);
 - d. All other business receipts earned in the city.

All receipts of the period covered by the report (computed on the cash or accrual basis, in accordance with the method of accounting used in the computation of the license payer's entire net income) must be taken into account.

(f) (1) The term "compensation", as used in this section, may include not only payment in cash or property, but the gross credits to or charges by the licensee, under its normal and usual accounting practices, for the performance of work or services. For example, a plant, a factory or other establishment, in the city, which processes material or manufactures parts for other plants or factories owned by the licensee, and which may receive credit for the performance of such services only by bookkeeping entries, may be chargeable under this section with the gross amount of such entries in applying the formula discussed in subsection (e). Furthermore, such bookkeeping entries may be considered in lieu of cash or property payment in determining the net profits of any license payer under this article even though the business allocation percentage formula may not be used by or be applicable to the licensee. Provided, however, that whenever such gross credits or charges are included in computing the net profits of any licensee who or which pays a license fee thereon under this article, the same licensee shall not be twice subject in the same fee period by the separate imposition of a fee upon such gross credits or charges.

(2) Compensation and other receipts from work done or services performed within the city are allocable to the city and subject under this chapter. All amounts so received credited or charged by licensee in payment for such work or services are so allocable, irrespective of whether done or performed by employees of agents of licensees, by subcontractors, or by any other persons. It is immaterial where such amounts were payable or where they were received. Commissions or fees received by the licensee are allocated to the city if the services for which the commissions were paid were performed in the city. If the license payer's services for which commissions or fees were paid were performed for the license payer by salesmen, or other agents or employees attached to or working out of the place of business in the city of the licensee, the licensee's services will be deemed to have been performed in the city. Where a lump is received by the licensee in payment for services within and without the city, the amount attributable to services within the city is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without the city, or by some other reasonable method approved by the director of finance. Full details must be submitted with the licensee's report.

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

(g) The percentage of the license payer's payroll allocable to the city is determined by dividing the wages, salaries, and other personal service compensation of the licensee's employees with the city during the period covered by the report, by the total amount of compensation of all licensee's employees during such period. Wages, salaries, and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the licensee. Employees with the city include all employees regularly connected with a place of business maintained by the licensee in the city. Wherever it appears that the licensee's payroll was paid to employees attached to places of business outside the city who performed services within the city, the payroll factor is to be computed by deriving the percentage of the licensee's payroll paid in the city bears to the total payroll. In any such case, where an employee performs services both within and without the city, the amount treated as compensation for services performed with the city shall be deemed to be:

- (1) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis the amount received by him for the business attributable to his efforts within the city;
- (2) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his services within the city bears to the value of all his services;

- (3) In the case of an employee compensated on a timebasis, the proportion of the total amount received by him which the working employed in the city bears to the total working time.

Sec. 1-4. Income received from real estate.

(a) The income received from the operation of real estate by persons, trust companies, and real estate agents, for or on behalf of persons, or estates are subject to the license fee imposed by this article where such operation falls within the classes hereinafter described:

- (1) warehouses, apartments, hotels, and similar structures. The operation of these types of buildings, constitutes a subject activity, and the income thereof is subject to the fee imposed by this article;
- (2) apartment houses, single dwellings, and other rental property. As to this type of real estate, the income derived therefrom is considered subject when the operation thereof is so extended as to constitute an activity within the meaning of this article, and it shall constitute an activity within the meaning of this article if the person operates two or more units for rent.

(b) All corporations engaged in the rental of real estate or partnerships organized for that purpose shall be considered to be engaged in a subject activity.

(c) When any property falls within the classifications above given, the manner of its acquisition, i.e., purchase, gift, inheritance, fiduciary, or as fiduciary mortgagee in possession etc. does not affect the subjectability of the income derived therefrom.

(d) Where the property is located within the city limits, the residence of the beneficiary is immaterial.

sec. 1-5. Application to trusts, trading and securities, fiduciaries and independent contractors.

The following business activities are specifically, but not exclusively, subject to the license fee provided in this article:

- (1) **Trusts.** Whenever a trust estate is engaged in enterprise, activity or business, which is productive of income, the activity or business shall be considered subject to the license fee;

- (2) **Trading and securities.** Where a person engages in buying and selling of stocks, bonds, or other types of securities and such transactions are not isolated and few, but are extended so as to constitute an activity, the net profits therefrom are subject to the license fee;
- (3) **Fiduciary.** Monies received by a fiduciary is subject income, where a fiduciary is regularly engaged in a business or profession as a fiduciary or is engaged in a business or profession commonly regarded as being incidental or collateral thereto, for example, an attorney-at-law, real estate agent, etc., or if such commissions or fees represent a substantial portion of the earnings or income of the fiduciary, or when the administration of the trust requires a substantial portion of the fiduciary's available working time;
- (4) **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 by which that result is accomplished, such as authors, professional men, seamstresses, laundresses, tailors, registered nurses. The income received by such persons is subject to this license fee.

Sec. 1-6. Computing net profits.

The net profits of business and professions from activities conducted in the city shall be computed as follows:

- (1) Multiply the entire net profits from all sources by a business allocation percentage to be determined by:
 - (a) Ascertaining there percentage which the gross receipts of the licensee from sales or services rendered within the city bears to the total gross receipts from sales or services ever made;
 - (b) Ascertaining the percentage which the wages, salaries, and other personal service compensation period covered by the report for services performed or rendered within the city bears to the total wages, salaries and personal service compensation for such period of all the licensee's employees within and without the city;

(c) Adding together the percentage determined in accordance with subsections (1)a. and b. and dividing the total so obtained by two (2).

(2) Sales within the city shall be sales of merchandise made within the city and delivered to a customer within or without the city or services performed within the city for a customer.

Sec. 1-7. Return and payment of tax.

- (a) Every person whose earnings or net profits are subject to the license fee imposed by this article, shall on or before April fifteenth of each year, make and file a return with the director of finance. In the return filed there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commission, fees, and other compensation received or net profits earned, all as defined in this article, by and during the preceding year within the city and subject to the license fee, together with such pertinent information as the director of finance may require.
- (b) Where the entire earnings for the year are paid by one (1) and the same employer and the license fee has in each instance been withheld or deducted by the employer for the gross amount of compensation without adjustment for expenses, it shall not be necessary for such employee to file a return for the year unless required or requested to do so by the director of finance.
- (c) If the return is made for a fiscal year or for any period other than a calendar year, the return shall be made within one hundred five (105) days from the end of the fiscal year or other period.
- (d) The return shall also show the amount of the license fee imposed by this article on such earnings or net profits, or both;
- (e) The person making the return shall, at the time of filing pay to the city tax office the amount of fee shown to be due by the return.
- (f) Where any portion of the license fee otherwise due shall have been deducted at the source and shall have been paid to the city tax office by the person making the deduction, a credit equal to the amount so paid, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing of the return.
- (g) If a licensee shall terminate his business or employment for which the license fee has not been withheld during the calendar year or fiscal year, the proper return shall be filed

- (h) and the tax paid within one hundred thirty-five (135) days after termination of business or employment.
- (i) Persons temporarily engaged in business, as defined in this article, within the city, or temporarily performing services within this city, shall file a return and pay the license fee upon the completion of the business or employment.
- (j) Persons, associations, corporations, or other entities engaged in any occupation, trade, profession, or other activity in the city, other than those activities referred to in section 1-12 to require special regulation and supervision, shall pay a minimum license fee of (Beginning of Amendment of 12/02/2010) FIFTY DOLLARS (\$50.00) payable in advance, to the city for each calendar year, or fraction thereof in the case of a new business, which calendar year is to be for the period commencing January first and ending December thirty-first. All revenue derived under this article is to be used for defraying current, general and incidental expenses of the city. The minimum fee of (Beginning of Amendment of 12/02/2010) FIFTY DOLLARS (\$50.00) shall be a credit on the license fee as otherwise provided in this article only for the tax year which such minimum fee covers and shall not be a credit for any subsequent year. (Beginning of Amendment of 3/10/99) Persons holding elected office or persons receiving compensation for service on a civic or non-profit board and/or commission or volunteer firefighters shall not be subject to the minimum [~~\$25.00~~] \$50.00 license, but shall be responsible for payment of the .65% occupational tax levied on the gross salary as reported on their income tax schedule C.
- (k) The director of finance shall have the authority to extend the time for filing of any return required by this article or regulations thereunder at his discretion. Such extension shall be upon the written request of the licensee. Notwithstanding the granting of any extension of time for filing any required return, any balance unpaid when payment is due under the terms of this article shall bear interest at the rate as defined in KRS 131.010(6) until paid.

Sec. 1-8. Collection of license fee at source.

(a) It is the duty of each employer, as defined in this article, who employs one (1) or more persons on a salary, wage, commission or other compensation basis, to deduct monthly or more often, at the time of the payment of such compensation, the license fee on such salary, wage, bonus, incentive payment, commission, or other compensation due by the employer to the employee. The license fee shall be deducted by the employer from all compensation paid to employees for activities in the city. However, the mere fact that the license fee is not withheld

will not relieve the employee of the responsibility of filing a return and paying the fee on the compensation received. A nonresident employer either maintaining in the city an office, business address, or doing business in the city, or is otherwise subject to service of legal process is subject to the withholding provisions of this section.

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

- (1) If the licensee is a traveling salesman, agent, or other employees, whose compensation on the basis of commissions, depends directly on the volume of business transacted by him, the deducting and withholding shall attach to the portion of the entire compensation, which the volume of business transacted by him within the city bears to the volume of business transacted by him both within and outside the city;
 - (2) The deducting and withholding of personal service compensation of all other employees, including officers of corporations, shall attach to the portion of the personal service compensation of such employee, which the total number of working days employed within the city bears to the total number of working days employed within and outside the city;
 - (3) If it is impossible to apportion the earnings as provided because of the peculiar nature of the services of the employee or of the unusual basis of compensation, apportionment shall be made in accordance with the facts and the fee deducted and withheld accordingly. With respect to each such employee, or group of employees similarly or identically circumstanced, the employer shall furnish the director of finance a detailed statement of facts;
 - (4) The occasional entry into the city of an employee, who performs the duties for which he is employed entirely outside the city, of an employee, who performs the duties for which he is employed entirely outside the city, but enters the city for the purpose of reporting, receiving, instructing, accounting, etc., incidental to his duties outside the city shall not be deemed to take such employee out of the class of those rendering their service entirely outside the city.
- (c) An employer is required to withhold the license fee on the
- (d) full amount of any advances made to an employee on account

of commissions where in excess of commission earned.

(e) An employer required to withhold the license fee, on compensation paid to an employee, may in determining the amount on which the fee is to be withheld:

- (1) Ignore any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services; or
 - (2) Deduct any amount necessarily incurred and expended by the employee in the actual performance of his services, for which expense he is not to be or has not been reimbursed by the employer; provided, that in either case, such expense must be recognized by the federal and state authorities for payroll tax purposes and the federal authorities for income tax purposes, and the employee shall furnish the employer before the deduction is made an itemized statement of the expenses claimed.
- (f) Such employer shall, however, on or before January thirty-first of each year, furnish the director of finance a list of employees in such form as the employer may choose, setting forth the following information in respect to the preceding calendar year:

- (1) Name;
- (2) Address;
- (3) Gross wages paid.

Sec. 1-9. Returns of license fee withheld and payment.

(a) The return and payment required to be made on account of deductions by employers from salaries, wages and other compensation of employees shall be made quarterly for the quarterly periods ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year.

(b) The employer, in addition to any return required to be filed with respect to his own earnings or net profits, shall, on or before the last day of the month next following each quarterly period, make a return and pay to the city tax office the full amount of the license fee so deducted or withheld with respect to compensation paid all of his employees subject to the license fee under this article. No part of such tax so withheld and so reported may be paid to the city tax office in installments.

(c) The return required to be filed under this section shall be made on a form furnished by or obtainable from the city tax office.

(d) On or before the thirty-first day of January, unless written request for extension is made to and granted by the director of finance, an information return showing all employees from whom city

license fee has been withheld giving the name, address, of the employee, the total amount of compensation paid during the year, the amount of city license fee withheld from such employees.

(e) In deducting and withholding the license fee at source and in the payment of any fee under this article, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one (1) cent.

Sec 1-10. Types of compensation - Employees in general.

(a) The license fee provided for in this article is imposed on both residents and nonresidents of the city at the rate of .65 percent of all salaries, wages, commissions and other compensations earned for work done or services performed or rendered in the city.

(b) The following are subject to the license fee:

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

- a. As an officer, agent or employee, or both of a corporation, including a corporation of the first or nonprofit class, joint stock association or joint stock company;
- b. As an officer, agent or employee, as distinguished from a partner or member, of a partnership, limited partnership, or any other form of unincorporated enterprise owned by one (1) or more persons;
- c. As an agent employee, as distinguished from the proprietor, or a business, trade or profession, conducted or an individual owner;
- d. As an officer, agent or employee, whether elected or appointed, enlisted or commissioned, of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit of the state, or any of the political subdivisions thereof, or those of any other states, except for those excluded in Section 1-7, Paragraph (i);
- e. As an officer, agent or employee, whether elected or appointed, of a government administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit of the United States Government or of a corporation created and owned or controlled by the United States Government or any of its agencies, or those of any foreign country or

dependency except those enlisted or commissioned in the military service, except for those excluded in Section 1-7, Paragraph (i);

- f. As an officer, agent or employee of any other entity.
- (2) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property for services rendered:
- a. Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece-work rates;
 - b. Whether paid by an individual, copartnership, association, corporation, including a corporation of the first or nonprofit class, a governmental, administration, agency, arm, authority, board, body, branch, bureau, department, division, section or unit, other entity.
- (3) Commissions received by a taxpayer, whether directly or through an agent and whether in cash or in property, for services rendered regardless of how computed or by whom paid. If amounts received as a drawing account exceed the commissions earned the tax is payable on the amounts received. If such commissions are included in the net earnings of a trade, business or profession regularly carried on by such individual and therefore subject to license fee and they shall not again be separately taxed.
- (4) Fees, unless such fees are properly included as part of the net profits of a trade, business, profession or enterprise regularly carried on by the individual and such net profits are subject to tax. Fees paid to a director or officer of a corporation are subject to withholding as in the case of any other employee.
- (5) Other compensation which will be treated as subject to the license fee:
- a. **Tips received by waiters and others.** Tips received are subject to the license fee and will be reported in the same manner as earnings of an independent contractor.
 - b. **Vacation and/or holiday benefits.** Payments made to employees by an employer as vacation wages are subject;
 - c. **Separation payments.** Payments made to employees by an employer at the time of a voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the license fee.

(c) The following money receipts are not deemed to be salaries, wages, commissions and other compensations and the net profits within the meaning of this article:

Old age or retirement payments. Periodic payments, commonly recognized as old-age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment, or payments from 401-k retirement plans, IRA's or other qualified retirement plans.

Disability, sickness, accident benefits and unemployment compensation. Payments made to employees by an employer under a disability, sickness and accident plan or unemployment compensation payments by the state, or any other agency, or payments made to individuals as a result of disability, sickness, injury, accident or unemployment by insurance companies or any other entity or individual.

Death benefits. Death benefits payable by an employer to the beneficiary of an employee or to the employee's estate, whether payable in a single sum or otherwise.

Benefits arising under the Worker's Compensation Act.

Amounts received by employees under the Workers' Compensation Act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability.

(d) In the case of individuals whose compensation is earned for services performed both within and without the city and who receive subject payments as set forth in the foregoing rules and regulations of this section, they are subject to the license fee in the same proportion that services performed within the city bear to their total employment time.

Sec. 1-11. Same - Specific groups of employees.

(a) **Musicians and entertainers.** In the field of professional musicians there has arisen a practice peculiar to the engagement of musicians exclusively through a so-called "contractors". The practice which arose by prescription by the American Federation of Musicians and of local union regulations, enables the purchaser of music to deal with only one (1) of the number of musicians required for a particular occasion.

(1) **Contractor.** The term contractor means that individual musician through whom the purchaser and the musician negotiates the contract of service and the performance thereof. The contractor may or may not perform actual musical service under a contract which he has negotiated.

- (2) **Purchaser of music.** The person for whom or which the musical services are to be performed or furnished and who exercises an employer's control over the conduct of the musicians. For example, hotel, cafes, taprooms, restaurants, theaters, clubs, radio stations and radio sponsors.
- (3) **Name bands or orchestras.** A name band or orchestra is one which is identified or known by a name which holds itself out to the public as a permanent organization, and in addition thereto has either fixed personnel or the individual member musician has contracted for his services with the leader or the owner of the band at a fixed salary of term of individual engagement and over whom the purchaser has no direct control.
- (4) **Contract for purchase of music.** 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, except in the case of name bands, in which event the musicians shall be deemed employees of the leader or owner of the name band. The purchaser, and in the case of a name band, the leader or owner thereof, shall be the person responsible for withholding the license fee from the wages paid to the musicians, and the remittal thereof to the city tax office.
- (5) **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 club, cafe, taproom, theatre, 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 city tax office.

(b) Insurance agents:

- (1) **Generally.** Individuals engaged in the sale of insurance may be either employees or independent contractors as follows:
 - a. Where the individual is subject to the direct control of another as to the manner of his conduct and is paid a fixed fee, he is considered an employee and the amount of the license shall be withheld at the source.
 - b. Where the individual is not under the direct control of another and may conduct the sale as he sees fit, receiving his payment in the form of commission from the sale, he is considered an independent contractor and shall file his own return and make payment as an independent contractor.
- (2) **Commissions subject to license fee.**

- a. In determining whether the commissions payable by reasons of the selling of any policy by an agent resulted from work done or services performed or rendered in the city, the test shall be the residence of the insured at the time of issuance of the policy, rather than the actual place of solicitation, except where the solicitation is in the city and the agent's established place of business is within the city, the commission is subject to the license fee regardless of the residence of the insured;
 - b. If an agent has an office outside the city as well as office of his own within the city, the commission on policies sold to nonresidents, if handled through the outside office, are not subject to a license fee, since under such circumstances, they are not earnings or profits of an independent city business.
- (3) **Group insurance commissions.** Commissions paid on the sale of contracts of group insurance are subject if the group is located within the city as a unit without regard to the residence of the writing agent.
- (4) **Bonuses and incentive payments.** That proportionate part of all bonuses and incentive payments received by an agent, which bears the same ratio to the total amount of bonuses and incentive payments received by him, as the 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 resident and nonresidents is subject to the license fee.
- (5) **Advances and drawing accounts.** There are two (2) main types of advances and drawing account payments:
- a. Those which impose upon the agent a written obligation to repay if they are not in fact earned; and
 - b. Those which (though offset by commissions as earned) cannot be recovered at law even though the agent fails to produce business to justify them.

The first of these two (2) types of advance and drawing account payments is in the nature of a loan and accordingly is never subject to license fee. All commissions or bonuses, applied toward the repayment of these types of advances and drawing accounts are subject in accordance with the rules set forth above.

The second type of advance and drawing account payment is subject compensation when received to the extent that it exceeds compensation earned after July first.

(6) **Collection of license fee at source.** It is the duty of all companies doing business in the city (or general agents in the cases of agents whose contracts are with a general agent alone and to whom payment is made by general agent out of funds of general agent) to deduct or withhold monthly or more often the amounts of license fee due on all compensation paid to agents who are considered employees.

(c) Federal, state or municipal employees:

(1) Compensation received from the federal government for services performed within any federal reservation situated within the geographical limits of the city, title to which is in the federal government, is subject income, even though exclusive jurisdiction thereof was granted to the federal government by the state and the city, except for those excluded in Section 1-7, Paragraph (i).

(2) Compensation received from state, county and municipal governmental agencies is subject to the provisions of this article, except for those excluded in Section 1-7, Paragraph (i).

(3) Refund of tax withheld and paid covering activities outside the city will be made to employee upon application on form provided by director of finance.

(d) Real estate salesmen brokers:

(1) Real estate salesmen or brokers who are engaged in the business as employees rather than an independent contractor are not required to file a return for the commissions earned by them. The employer is required to deduct the fee from the commissions earned and remit the same to the city tax office.

(2) Real estate salesmen or brokers acting as independent contractors are subject to a license fee on their net profits in accordance with the rules and regulations herein pertinent.

(e) Tailors. Tailors who receive work to perform in their own shops for a specified amount to be paid for each garment, or independent contractors.

(f) Care Givers.

(1) A licensed caregiver (except provided below) is in the same status as any other professional person and is required to file a return upon his net profits. He may deduct the actual expenses incurred from the earnings of his fees. Deductible items are such expenses as are recognized as deductions by the Internal Revenue Service and Revenue Cabinet.

(2) A licensed caregiver regularly employed by a hospital, institution, business entity or individual is subject to the withholding provisions of this article.

(g) **Executives and directors.** An officer or director of a corporation performing services out of the city except for occasional visits to the city office to examine correspondence, etc. is not subject to the license fee. Where an organization meets in the city, and part of the work required as officer or director or such organization is done by him in the city, his compensation is subject in the ratio that those duties bear to his total duties.

(h) **Domestic servants.** Domestic servants employed in private homes are not subject to the provisions of this article.

(i) **Miscellaneous:**

- (1) Where compensation is received (paid) in property, its fair market value, at the time of receipt, shall be subject to a license fee and/or to withholding (deduction of fee at source). Board and lodging and similar items shall be included in earnings at their fair market value, where such board and lodging is considered part of the compensation paid. However, the value accepted for the purpose of the state and federal payroll taxes may be accepted by the director of finance.
- (2) In the case of employees who incur and pay expenses directly connected with performance of their duties or services and for which no reimbursement is made by the employer the reasonable actual expenses incurred and paid in earning the compensation may be deducted in computing the amount subject to the license fee. To be allowed, however, such expenses must be recognized as deductions by the federal and state authorities for payroll and tax purposes.
- (3) Such items as personal, family or living expenses, expenses commuting to and from work, old-age benefits taxes, deductions for group insurance, hospitalization pension plans, etc. are not deductible as expenses directly connected with the performance of service.

Sec. 1-12. Regulatory license fees.

~~(a) The City Council hereby finds that the following occupations are of such a nature as to require regulation and supervision and therefore the following minimum license fees are imposed on every person engaged in the business, occupation, calling or profession, or using, holding or exhibiting articles named in this section who shall pay in advance to the city for each calendar year (or fraction thereof in the case of a new business) the license fee or fees herein set forth which payment shall be credit on the license fee as otherwise provided in this article; provided, however, that where minimum fees are set forth in the following table for a period of less than one (1)~~

~~year the same shall be considered as the minimum fee due for the period set forth in the table and shall be paid in advance of engaging the activity.~~

~~(b) If a licensee engaged in more than one (1) type of activity in one business entity, the highest minimum license fee shall apply. In the following table the words, "before showing" shall mean the license fee per showing is due prior to the date of each showing. Where the word "yearly" appears the same shall mean that the minimum fee shall be due on or before the first day of January, and shall be for the ensuing year ending December thirty-first and for a like period of time for each succeeding year thereafter.~~

~~(c) In no event shall any minimum fee set forth under this section be reduced for the reason that the business or activity covering same shall have been commenced subsequent to the first day of January of the tax year.~~

FEE SCHEDULE

OCCUPATIONS	FEE
CARNIVALS, regardless of local sponsorship, per week before showing.	\$200.00
CIRCUSES, regardless of local sponsorship, per day before showing.	175.00
CITY DIRECTORY, twelve (12) free copies of city directory and.	50.00
DANCE HALLS, (tax exempt to nonprofit or fraternal organizations), per dance	20.00
FORTUNE TELLING, clairvoyant, palmist, yearly	150.00
DOOR-TO-DOOR SALESMEN, whether itinerant or not, each salesman, yearly	25.00
NURSERYMEN, ITINERANT, yearly.	25.00
PEDDLERS	
(1) Produce grown or produced in the county	EXEMPT
(2) General peddlers, yearly	25.00
(3) Ice cream or confection peddlers, each wagon yearly	15.00
(4) Poultry, itinerant dealers, yearly.	25.00
(5) PAWNBROKERS, yearly	100.00
PINBALL, JUKEBOX, ETC. Every person conducting or engaging in the business of operating, renting, leasing, selling, distributing or installing any machine board, table or device where same is operated by the insertion of a coin or any counter device where same is operated or otherwise,	

~~used for amusement or skill, same and except those used solely for the purpose of vending chewing gum, peanuts, candy, cigarettes, or other merchandise and about which there is no element of amusement or skill, shall pay a license fee. License shall be publicly displayed on each machine, per year, of each machine, yearly. . . 10.00~~

PINHOOKER

~~(The business of buying livestock on the streets from farmers delivering same to stock market for purpose of resale), yearly . . . 10.00}~~

Sec. 1-13. Payment of license fee; withholding and return.

Each employer who employs one (1) or more persons within the city shall deduct monthly or more often than monthly, at the time of payment thereof, the license fee due from each employee measured by the amount of salaries, wages, commissions, or compensation due by the employer to employee and shall pay to the city tax office the amount of license fee so deducted. The payment required to be made on account of deduction by employers shall be made quarterly, for the quarterly periods ending March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, on or before the last day of the month next following the quarter of the deduction, to the city tax office. The employer shall, annually during the month of January of each year, make a return to the director of finance in which is set forth the name and residence of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensations earned during such preceding year, by each such employee; provided however, that the failure or omission of any employer to deduct such license fee in compliance with such regulations with respect to making returns and payment thereof, as may be fixed in this article or established by the director of finance. (Beginning of Amendment 03/10/1999) Federal employees who are responsible for the withholding and payment of the ~~[-.65%]~~ (Beginning Amendment 07/01/2018) 1.15% occupational tax shall have the option of paying the gross amount owed on an annual basis during the month of January each year.

Sec. 1-14. Duties of the city tax office and director of finance.

- (a) The director of finance is required:
 - (1) To collect the license fee imposed under this article;
 - (2) To adopt and promulgate, and to enforce rules and regulations relating to any matter of things pertaining to the administration and enforcement of the provisions of this article, including provisions for the reexamination and correction of returns and payments, but not limited thereto. The rules and regulations as promulgated by him shall be binding upon the licensee and employers; provided, however, all such rules, regulations and decisions shall be subject to the consent and approval of the City Council.

(b) The city tax office is required:

- (1) To receive the license fee imposed under this article;
- (2) To keep an accurate record showing the amount received by him for each license payer and withholding employer and the date of the receipts.

(c) Under the powers given the director of finance, these regulations are issued. Additional regulations and rulings will be issued from time to time as circumstances may demand. These regulations, together with all amendments and supplements and supplements thereto and all changes therein, will be on file with the director of finance; and will be open to public inspection. Copies thereof will so far as possible, be available to all license payers, employers and their representatives upon request.

(d) The director of finance shall have the following inquisitorial powers:

(1) The director of finance personally, or his agents or employees, is authorized and empowered to examine the books, papers and records of any employer, or supposed employer, or of any license payer, or supposed license payer, in order to verify the accuracy of any return made, to ascertain the license fee imposed by this article. The director may enforce this right by application to the appropriate court having jurisdiction over these matters.

(2) Every employer or supposed employer, and every licensed payer or supposed license payer, is required to furnish to the director of finance or his duly authorized agents and employees, the means, facilities and opportunity for such examinations, investigations and audits as are authorized in and by this article.

(3) The director of finance is further authorized to examine under oath any person concerning any income which was or should have been returned for license fee and to this end the director of finance has the right and power to compel the production of books, papers and record, and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income.

(4) Refusal of any examination of any employer or person subject to the license fee or presumed to be such employer or person so subject constitutes a misdemeanor punishable by fine.

(5) Agents and employees charged with duty of inspection or auditing of records of employers and license payers will carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.

Sec. 1-15. Record to be kept by employers and license payers.

Employers and others subject to the license fee under this article are required to keep such records as will enable the filing of true and accurate returns, whether of fees withheld at source or of fees payable upon earnings or net profits, or both and such records are to be preserved to enable the director of finance to verify the correctness of the return filed.

Sec. 1-16. Collection of deficiencies; allowance of credit for overpayment.

(a) If as a result of investigation conducted by the director of finance a return is found to be incorrect, the director of finance is authorized to assess and collect any underpayment of license fee withheld at source or any underpayment of license owing by the license payer, with respect to earnings or net profits, or both. If no return has been filed and a license fee is bound to be owing, the fee actually owing may be assessed and collected with or without formality of obtaining a delinquent return from the employer or taxpayer.

(b) Should it be disclosed either as a result of an investigation by the director of finance or through the medium of the filing of a claim or petition for refund or credit, that an overpayment has been made, the city will refund such overpayment.

(c) The employer will in every instance be required to pay the full license fee which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld, the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of such adjustments with the employees, and such adjustment made during any month will not need to be reflected in the withholding return disclosed by schedules or statements thereto attached. However, where adjustments are made between employer and employee disclosure shall be made in a statement supporting the annual schedule or schedules filed pursuant to his article.

Sec. 1-17. Confidential information.

(a) Any information gained by the city tax office, the director of finance, or any other official or agent or employee of the city as a result of any returns, investigations, hearings or verifications required or authorized by this article shall be confidential, except in accordance with proper judicial order, and any person or agent divulging such information shall upon conviction, be subject to a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) or imprisonment not to exceed sixty (60) days, or both, at the discretion of the court, and shall be dismissed from employment by the city upon conviction; provided however, such person may disclose to the state commissioner of revenue or his duly authorized agent all such information and the right to inspect any of the books and records of the city if the state commissioner of revenue grants to the city the reciprocal right to obtain information from the files and records from the state

department of revenue and maintains the privileged character of the information so furnished to him.

(b) License fee returns and all audits connected therewith are confidential. Any information gained by the director of finance and city tax office by their agents or employees, or by any other official or agent of the city as a result of any returns, investigations, hearings, or verifications required or authorized by this article, shall be held confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law. Violation of this subsection constitutes a misdemeanor, punishable by fine not less than two hundred fifty dollars (\$250.00 nor more than five hundred dollars (\$500.00) or imprisonment of not exceeding sixty (60) days, or both at the discretion of the court; and by dismissal from employment by the city. Every such breach of confidence constitutes a separate offense.

Sec. 1-18. Interest and penalties.

All license fees imposed by this article remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid fee, at the rate as defined in KRS 131.010(6) and the license payers upon whom the taxes are imposed shall be liable, in addition to the fee and interest, to a penalty of one (1) percent per month or fraction thereof not to exceed ten (10) percent of the amount of such unpaid license fee.

Sec. 1-19. Unlawful imposition of license.

(a) All monies derived from license fees under the provisions of this article shall be paid to the city tax office and placed to the credit of the general revenue fund of the city and shall be used and expended in defraying current, general and incidental expenses of the city.

(b) It is the purpose of this article to provide revenue for the general fund of the city and it is not the intention of the city or of this article to impose and require an occupational license fee prohibited by law.

Sec. 1-20. Violations and penalties.

(a) It shall be unlawful for any person to engage in any occupation, trade or profession, or other activity in the city without first having paid the minimum license fees herein required. There shall be a penalty of ten (10) percent of the amount of any license fee imposed if the license fee is not paid on or before (Beginning of Amendment 05/15/2017) ~~[January 1st]~~ January 31st of the tax year that same shall have become due, ~~(new business or activity commenced after June first in any year is not subject to the penalty)~~ (original Amendment 05/15/2017 did not properly line through this language) and there shall be a penalty of 40% of the amount of any license fee imposed if the license fee is not paid by March 1st (new business or activity commenced after January 1st in any year is not subject to the penalty) Any person, firm or corporation who violates any provision of this chapter, who shall fail, neglect ~~or refuse~~ fail, neglect to pay the minimum fees as

hereinabove set forth when same shall have become due and payable, shall in addition to the penalties herein prescribed, with exceptions of those punishable under 110.99(B) shall be subject to a civil offense with a civil fine of not less than \$250.00 per violation but not more than \$500.00 per violation. If the civil fine is uncontested, ~~[them]~~then the amount per violation shall be \$250.00.

(b) Any person who shall fail, neglect or refuse to make any return required by this ~~[article]~~ordinance or any employer who shall fail to withhold the license fee or to pay over to the city those so withheld under the terms of this ~~[article]~~ordinance, or any person who shall refuse to permit the director of finance or any agent, employee designated by him in writing, to examine books, records and papers pertaining to information required under this ~~[article]~~ordinance, or who shall knowingly make any incomplete, false or fraudulent return, or shall attempt to do anything whatever to avoid the payment of the whole of any part of the license fee shall become liable to the city for such fees as well as the interest and penalty thereof and shall in addition, ~~[upon conviction]~~ be subject to a ~~[fine of not less than twenty five (\$25.00) nor more than five hundred dollars (\$500.00) or imprisonment for not more than thirty(30) days of to both such fines and imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed herein.]~~ civil offense with a civil fine of not less than \$250.00 per violation but not more than \$500.00 per violation. If the civil fine is uncontested, then the amount per violation shall be \$250.00.

(c) The failure of any employer or license payer to receive or procure returns, or other forms is not an excuse for failure to make any return, or to pay the license fee.

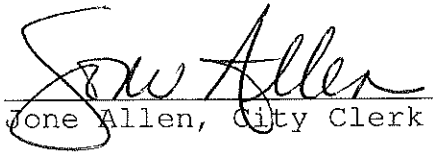
~~(d) Anyone who violates 110.48(A) shall, upon finding of the Code Enforcement be subject to a civil offense with a civil fine of not less than \$250.00 per violation but not more than \$500.00 per violation. If the Civil fine is uncontested, [them]the amount per violation shall be \$250.00; provided however, the person may disclose to the State Commissioner of Revenue or his duly authorized agent all information and the right to inspect any of the books and records of the city if the State Commissioner of Revenue grants to the city the reciprocal right to obtain information from the files and records from the State Department of Revenue and maintains the privileged character of the information so furnished to him.~~

~~(e) Anyone who violates 110.48(B) shall be guilty of a misdemeanor, punishable by fine not less than \$250 nor more than \$500 or imprisonment of not exceeding 60 days, or both at the discretion of the court; and by dismissal from employment by the city. Every breach of confidence constitutes a separate offense.~~

This Amended Ordinance becomes effective on June 18th, 2020.

A first reading of this Amended Ordinance was had on May 7th, 2020, and a second reading of this Amended Ordinance was had on June 11th, 2020. This Ordinance passed by a 5/0 vote of the Stanford City Council on June 11th, 2020.


Scottie Ernst, Mayor

Attest: 
Jone Allen, City Clerk