

ORDINANCE NO. 828-2017

AN ORDINANCE OF THE CITY OF DRY RIDGE, GRANT COUNTY, KENTUCKY, FOR THE IMPOSITION OF LICENSE TAXES ON CERTAIN BUSINESSES, OCCUPATIONS, TRADES OR SERVICES SUPERSEDING AND REPEALING ALL ORDINANCES PREVIOUSLY ENACTED REGARDING SAME, REQUIRING OF PAYMENT OF SAID LICENSES AND TAXES AND PROVIDING PENALTIES FOR FAILURE TO PURCHASE SAME.

BE IT HEREBY ORDAINED BY THE CITY OF DRY RIDGE, KENTUCKY, AS FOLLOWS:

GENERAL ARTICLE

Pursuant to the laws and statutes of the Commonwealth of Kentucky, the City of Dry Ridge, Grant County, Kentucky, hereby adopts, establishes and ordains as set forth hereinafter within the following articles regarding the issuance, renewal and enforcement of business licenses within the city limits of Dry Ridge, Kentucky.

ARTICLE I:

Purpose

WHEREAS, the City of Dry Ridge has heretofore enacted various ordinances providing for the assessment and collection of occupational taxes and licenses, and

WHEREAS, it appears that all previously enacted ordinances are obsolete,

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF DRY RIDGE, GRANT COUNTY, KENTUCKY AS FOLLOWS:

ARTICLE II:

Repeal

All ordinances previously enacted by the City Council relating to occupational license taxes are hereby repealed including 822-2016.

ARTICLE III:

License Required

- A. Every business entity engaged in any trade, occupation, employment, business, or profession (which terms are hereinafter collectively called "**business**") hereinafter specified, shall be required to obtain the occupational license and pay a license tax therefor herein provided, prior to beginning to engage in the business and thereafter, on or before the fifteenth day of the fourth month following the end of the taxable year of the business entity.
- B. All licenses issued under the provisions of this chapter shall have the license year for which they are issued written on the face of the license in large figures, and it shall be the duty of each person to whom a license is issued to keep the license or a duplicate thereof as herein provided for, posted in a conspicuous place in his place of business, where it will be at all times exposed to the public view. Any person holding a business license under this Ordinance shall present said license upon request by the Code Enforcement Office, Dry Ridge Police Department, Mayor and/or City Attorney, any City Representative. Failure to produce said license may result in a fine up to \$100.00.
- C. No license issued under this chapter shall authorize any person to engage in any business other than the one for which the license was issued, unless transferred by the City Clerk as hereinafter provided.
- D. Where, under any ordinance, statute, or law, a special form of application is required or bond demanded prior to entering into any business for which a license is applied for under the provisions of this chapter,

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the City Clerk shall not issue the license hereunder until such special application has been made or such bond properly executed.

E. The following entities are specifically exempt. Exempt of the fee means a business license must be obtained, but with no fee.

- (1) Non-profit entities as designated as such by the federal tax code
- (2) Any governmental entity or agency.
- (3) Schools
- (4) Churches
- (5) Minors (17 & under) (Exemption VOID if minor uses commercial transportation)

F. Any other entity where the imposition of such tax would violate a provision of the Kentucky Revised Statute or federal law.

G. For purposes of this Article, the advertisement of any person or entity that he is engaged in any business, for which a license is required, shall be conclusive evidence that such a license is required by under this Article.

**ARTICLE IV:
Definitions**

Business – A classification meaning all services, activities, occupations, vocation, pursuits, trades, callings or professions located and/or performed within the city with the object of pecuniary gain, benefit, or advantage to the person, or to another person or class, directly or indirectly, whether part-time or full-time. This definition includes, without limitation, home occupations, peddlers, and the rental of commercial and residential real property. It also includes the activities of businesses that are located outside the city where sales or services are performed by the physical presence of business representatives inside the city, including, but not limited to those itemized classifications set forth and established in the 2012 NAICS Codes, along with all subsequently adopted amendments and modifications thereto.

Business Entity — Each separate corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted.

City—The City of Dry Ridge, Kentucky, its government, representatives, authorized agents, successors and assigns.

Compensation — Wages, salaries, commission, 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:

- (1) 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
- (2) 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.

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Employee — Any person who renders services to another person or 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 or instrumentality of any one or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

Employer — as defined in section 3401(d) of the Internal Revenue Code.

Fiscal year — as defined in section 7701 (a)(24) of the Internal Revenue Code.

Gross Receipts — All revenues or proceeds derived from the sale, lease, or rental of goods, services, or property by a business entity reduced by the following:

- (1) Sales and excise taxes paid; and
- (2) Returns and allowances.

Internal Revenue Code — The Internal Revenue Code in effect on December 31, 2004, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2005, that would otherwise terminate.

Offending Party—A person who has received a citation for a violation of this chapter.

Person—One or more human beings, of either sex, or an entity that is recognized by law as having the rights and duties of a human being such as a corporation, company, partnership, association, trust, joint venture or other entity capable of maintaining a legal action and/or having a legal action brought against it, as authorized under the laws of the Commonwealth of Kentucky, however, shall not include employees of persons licensed pursuant to this chapter.

Sales Revenue — Receipts from the sale, lease, or rental of goods, services, or property.

Tax — as used in this chapter and "LICENSE FEE", "LICENSE TAX" and "OCCUPATIONAL LICENSE FEE" as used in other city ordinances dealing with the occupational license tax or fee of the city, shall have the same meaning as is afforded to the term "tax" in KRS 67.750 to 67.790.

Tax District — The city, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes.

Taxable Gross Receipts — In case of a business entity having payroll or sales revenue both within and without the city means gross receipts as defined in this section, as apportioned under KRS 67.753.

Taxable Gross Receipts — In case of a business entity having payroll or sales revenue only in the city means gross receipts as defined in this section.

Taxable Year — The calendar year or fiscal year ending during the calendar year, upon the basis of which gross receipts is computed.

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ARTICLE V:

License Application Procedure

- A. Every person required to procure a license under the provisions of this chapter shall submit an application for such license in writing to the City Clerk on forms provided by the City of Dry Ridge
- B. No license shall be issued under the provisions of this Ordinance unless the business is in good standing with the City, including, but not limited to being current on all taxes, levies, fees, assessments and/or licenses which may be due or owed; and, being in compliance with all planning and zoning and other applicable City ordinances.

ARTICLE VI:

License Taxes Established

- A. Every business entity engaged in any business in the city shall, at the time the license herein required is obtained, pay the annual license tax on the taxable gross receipts derived from such activity as herein computed.
- B. Every business entity shall compute and pay said license tax in the same form of business entity (i.e., corporation, partnership, etc.) as they report income to the federal government.
- C. The license tax shall be computed and is hereby levied in the amount of 0.0005 (.05%) of taxable gross receipts with a minimum license tax of \$40 per year and maximum license tax of \$1,000 per year.
- D. The license tax for each license year shall be computed based upon the income shown on the last federal income tax return filed by the business entity liable for the license tax prior to the license year for which the license is obtained. A new business, defined as one which has not yet filed a federal income tax return with respect to income from business operations in the city, shall estimate license fee based on projected first year income at the time of obtaining the occupational license and upon filing its first federal income tax return shall report the applicable amount of income therefrom to the City Clerk and either pay an additional fee or receive a corresponding credit for the first license year equal to the difference between the estimated fee paid and the fee which would have been paid had the amount of such income been known at the time the license for the first year was obtained. If an underpayment occurs, then penalty and interest shall be assessed on the amount of the difference if the licensee underestimates more than 50%.
- E. The license tax as computed and levied in (D) above shall become effective for the license period beginning July 1, 2017, and shall apply to all new licenses and renewals of licenses.

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ARTICLE VII:

Apportionment of Gross Receipts

- A. Except as provided in division (D) of this section, gross receipts shall be apportioned as follows:
- (1) For business entities with both payroll and sales revenue in more than one tax district, by multiplying the gross receipts by a fraction, the numerator of which is the payroll factor, described in division (B) of this section, plus the sales factor, described in division (C) of this section, and the denominator of which is two; and
 - (2) For business entities with sales revenue in more than one tax district, by multiplying the gross receipts by the sales factor as set forth in division (C) of this section.
- B. 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.
- C. 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.
- (1) The sale, lease, or rental of tangible personal property is in the city if:
 - (a) The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the city regardless of the f.o.b. point or other conditions of the sale; or
 - (b) The property is shipped from an office, store, warehouse, factory, or other place of storage in the city and the purchaser is the United States government.
 - (2) 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.
 - (3) Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.
- D. 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:
- (1) Separate accounting;
 - (2) The exclusion of any one or more of the factors;
 - (3) The inclusion of one or more additional factors which will fairly represent the business entity's business activity in the city; or
 - (4) The employment of any other method to effectuate an equitable allocation and apportionment of gross receipts.

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**ARTICLE VIII:
Duplicate Licenses**

In order for any person, company, partnership, or corporation, which conducts business in the city at more than one location, to comply with that portion of Article III, which requires the license to be posted at a conspicuous place in the place of business, the City Clerk shall issue a duplicate of the license to such person, company, partnership, or corporation for each such additional location. The City Clerk shall charge each such person, company, partnership, or corporation a fee of \$25 for each duplicate license so issued.

**ARTICLE IX:
Annual Renewal of Licenses**

The application and review of application provisions of this chapter shall not apply to annual renewal of licenses issued hereunder unless there is a material change in the ownership of, location of, or type of business conducted by a business for which a license is issued hereunder; or unless the license holder is indebted to the city for delinquent taxes, assessments, payroll withholding, fines or similar obligations. In the event of such a material change or indebtedness, the license-holder must file an application and same must be approved as herein provided prior to such renewal.

**ARTICLE X:
Revocation of License**

A. Any license issued pursuant to this chapter may be revoked or suspended by the City Council, after notice and hearing, for any of the following causes:

- (1) Any false or intentionally misleading statement contained in the application for the license.
- (2) Any failure or refusal to perform or abide by any of the conditions of a conditional license.
- (3) The criminal conviction of any of the persons listed as the owners, partners, sole proprietor of a felony; a misdemeanor for which a jail sentence may be imposed; any other crime in which moral turpitude is involved; or any other crime which directly relates to a business of the type for which the license was issued. Provided, however, that in making the decision, the City Council shall consider:
 - (a) The nature and seriousness of the crime for which the individual was convicted;
 - (b) The relationship of the crime to the purposes of regulating the business for which the license was issued;
 - (c) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the operation of the business for which the license was issued;
 - (d) The extent to which the individual has been successfully rehabilitated.
- (4) The revocation, suspension, or expiration without renewal of any license, permit, degree, certification, or other similar document, under the provisions of any applicable city ordinance, county ordinance, or state or federal laws, which is a legal prerequisite to the conduct of or employment in the business for which application is made for the license hereunder, which was issued to or held by any of the persons described as the owners, or any employee of the business for which the license was issued.
- (5) The conduct, by the owner or any employee, of the business for which the license was issued in an unlawful manner.

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- (6) Permitting or allowing the premises, on which the business for which the license was issued are located or the premises adjacent thereto under the control of the license-holder, to be used for any unlawful purpose or in an unlawful manner.
- B. The City Council shall hold a hearing on the question of revocation or suspension of any license issued under the provisions of this chapter. The Mayor shall set a time and place for such hearing and shall notify the affected license-holder in writing, by certified mail or personal service, of the time and place of said hearing not less than ten days prior to the date set for the hearing. Such written notice shall set forth specifically the grounds alleged for the revocation or suspension and shall inform the license-holder that the hearing may result in the revocation or suspension of the license. The order of the City Council on such revocation or suspension shall be final.
- C. Revocation or suspension of a license hereunder shall be in addition to the imposition of any other penalty prescribed by this chapter or any other ordinance, statute, or law.

ARTICLE XI: Effective Date

The provisions of this ordinance shall be effective March 1, 2017.

ARTICLE XII: Applicability of Federal Law

- A. For purposes of this chapter, computations of gross income and deductions therefrom, gross receipts or sales, and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.
- B. Every business entity subject to an occupational license tax governed by the provisions of this chapter 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 of the business entity.
- C. The city may require, for the purpose of ascertaining the correctness of any return or for the purposes of noting 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.

ARTICLE XIII: Cessation of Business

If any business entity dissolves 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, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of gross receipts taxes or tax withheld for the period of that taxable year during which the business entity had gross receipts or tax withheld in the city.

ARTICLE XIV: Use of Federal Tax Year

If a business entity makes, or is required to make, a federal income tax return, the gross receipts shall be computed for the purposes of this chapter 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.

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**ARTICLE XV:
Due Date of Return, Copy of Federal Return**

- A. All business entities' returns for the preceding taxable year shall be made by April 15 in 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.
- B. Every business entity shall submit a copy of its federal income tax return at the time of filing its 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 all statements and schedules in support thereof. The city may also require copies of reports of adjustments made by the federal government.

**ARTICLE XVI:
Extensions**

The city may grant any business entity an extension of not more than six 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 tax, requests the extension and pays the amount properly estimated as its tax. If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to 12% per annum simple interest on the tax shown due on the return, but not 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.

**ARTICLE XVII:
Tax Due When Return Filed**

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 tax return, determined without regard to any extension of time for filing the return.

**ARTICLE XVIII:
Audits**

- A. As used in this section, unless the context requires otherwise:
 - (1) "CONCLUSION OF THE FEDERAL AUDIT" means the date that the adjustments made by the Internal Revenue Service to net income or gross receipts as reported on the business entity's federal income tax return become final and unappealable; and
 - (2) "FINAL DETERMINATION OF THE FEDERAL AUDIT" means the revenue agent's report or other documents reflecting the final and appealable adjustments made by the Internal Revenue Service.
- B. As soon as practicable after each return is received, the city may examine and audit it. 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 years from the date the return was filed, except as otherwise provided in this division (B).
 - (1) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.
 - (2) In the case of a return where a business entity understates gross receipts, or omits an amount properly includable in gross receipts, or both, which understatement or omission or both is in excess of 25% of the amount of gross receipts stated in the return, the additional tax may be assessed at any time within six years after the return was filed.

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- (3) 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 months from the date the city receives the final determination of the federal audit from the business entity, whichever is later.
 - (4) The times provided in this division may be extended by agreement between the business entity and the city. For the purposes of this division, 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.
- C. Every business entity shall submit a copy of the final determination of the federal audit within 30 days of the conclusion of the federal audit.
 - D. The city may initiate a civil action for the collection of any additional tax within the times prescribed in division (B) of this section.

ARTICLE XIX:

Penalties

- A. A business entity subject to tax on gross receipts shall be subject to a penalty equal to 5% of the tax due for each calendar month or fraction thereof if the business entity:
 - (1) Fails to file any return or report on or before the due date prescribed for filing or as extended by the city; or
 - (2) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment.
- E. The total penalty levied pursuant to this division shall not exceed 25% of the total tax due; however, the penalty shall not be less than \$25.
- F. In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to 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.
- G. Every tax provided for in this chapter and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.
- H. Any business entity which fails to remit the proper tax and penalties on or before the first day of the month following the due date, shall have any and all city provided utilities disconnected (cut off), unless such action is otherwise prohibited by law. Any person or business who has their utility services disconnected under this provision shall pay any applicable service fees in a addition to the fees and penalties imposed elsewhere in the article.
- I. In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return, willfully makes a false return, or willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- J. 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 chapter 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.

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K. 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 KRS 67.750 to 67.790, or by the rules of the city or by written request for information to the business entity by the city.

L. Privacy

- (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 laws or in any action challenging a tax law of the city.
- (2) Any person who violates the provisions of division (H)(1) of this section by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than \$500 or imprisoned for not longer than six months, or both.
- (3) Any person who violates the provisions of division (H)(1) of this section by divulging confidential taxpayer information shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

M. In addition to any penalties imposed, the Offending Party shall also be liable for all attorney's fees and court costs.

**ARTICLE XX
Enforcement**

- A. It shall be the duty of the Code Enforcement Office, Dry Ridge Police Department, Designated City Representative, Mayor and/or City Attorney to enforce of the provisions of this Ordinance.
- B. It shall be the duty of the enforcement staff upon his or her learning that any person, firm or corporation required by this ordinance to pay any license tax, has not paid same, to send to that person, firm or corporation a letter stating that said license is due and identify any applicable penalties.
- C. In the alternate, a written notification may be issued to a violator of the provisions of this ordinance if the enforcement staff finds a business actively engaged in work within the city limits that has failed to obtain a license. This notice shall include the time and location of the offending work along with a notice to cease all work until a license is obtained. If the violator fails to cease work, the violator shall be fined not more than \$500 or imprisoned for not longer than six months, or both.

**ARTICLE XXI
Validity of License**

A business license shall only be valid when issued from the Office of City Clerk and stamped with the City Seal.

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ARTICLE XXII

Miscellaneous Provisions

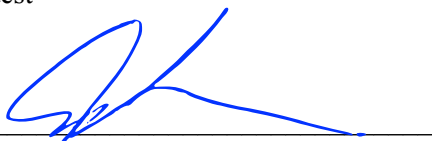
- A. All revenue received for the payment of license taxes and penalties shall be paid into and shall become part of the General Fund of the City of Dry Ridge to be used for general operating expenses of the City.
- B. The different sections and items of this ordinance are hereby declared to be severable and is the intention of the City Council that if any portion of this ordinance be held invalid then the remaining portions are to be and to remain in full force.
- C. Each license shall be specific to the person and/or entity seeking to conduct business within the City. No such licenses shall be transferrable or assignable. In the event a business is sold or transferred, the license issued to previous owner shall expire on the date of such sale or transfer. The owner shall apply for and obtain a new license prior to initiating business.
- D. For matters of transition from the current process to this provisions of this ordinance:
 - a. Business entities with a fiscal year ending between October 31st and March 31st - will have their license renewed in July 2017 and effective until the forth month following the close of the next fiscal year.
 - b. Business entities with a fiscal year ending between April 30th and September 30th - will have their license extended until the forth month following the end of the fiscal year in 2017.
- E. No refunds will be issued for any IDENTITY that is no longer conducting business within City Limits.

First Reading: March 6, 2017


Second Reading: March 20, 2017

PASSED, ORDAINED, APPROVED AND ORDERED PUBLISHED ON THIS THE

Attest



Amy Kenner, Clerk



James Wells, Mayor