

**ORDINANCE NO. 19-05-16
CITY OF CRAB ORCHARD, KENTUCKY**

OCCUPATIONAL LICENSE FEE UPON WAGES

AN ORDINANCE RELATING TO IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT THROUGH THE PAYMENT OF A PAYROLL FEE BY EMPLOYEES EARNING WAGES.

WHEREAS, the City of Crab Orchard desires to comply with the requirements of KRS 67.750 to 67.790;

AND WHEREAS, the City of Crab Orchard recognizes that businesses and owners of business real estate pay ad valorem and other taxes upon business stock-in-trade and realty, and hence, excludes business entities from paying further monies, hereunder,

BE IT ORDAINED by the City Council of the City of Crab Orchard as follows:

Ordinance No. 19-05-16 is hereby enacted and shall read in full as follows:

I. DEFINITIONS

1. "Compensation" means wages, salaries, commissions, or other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

- (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(b), 408, 414(h), or 458 of the Internal Revenue code; and
- (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code.

2. "Employee" means any person who renders services to another person, business entity, governmental entity or agency, 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 (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.

3. "Employer" means any person or entity for which an individual or individuals perform or performed any service, of whatsoever nature, as the employee or employees of such person or entity.

4. "Taxable year" means the calendar year upon the basis of which gross receipts or total annual income is computed.

II. PAYROLL FEE

1. PAYROLL FEE REQUIRED

The payroll fee shall be measured by one percent (1%) of all wages and compensation paid or payable in the City for work done or services performed or rendered in the city by an employee.

2. EMPLOYER TO WITHHOLD

Every employer making payments of compensation to an employee shall deduct and withhold upon payment of the compensation the payroll fee required by this ordinance. Amounts withheld shall be paid to the City in accordance with subsection (3), below. If an employee's employer does not withhold the payroll fee required pursuant to this ordinance, the employee shall pay the payroll fee over to the City in accordance with subsection (3), below.

3. RETURNS REQUIRED

Every employer required to deduct and withhold payroll fees pursuant to this ordinance shall ordinance shall submit a payroll fee return on a quarterly basis.

4. LIABILITY OF EMPLOYER FOR FAILURE TO WITHHOLD OR PAY PAYROLL FEE.

- A. Every employer who fails to withhold or pay to the city any sums of payroll fee required by this ordinance to be withheld and paid shall be personally and individually liable to the City for any sum withheld or required to be withheld.
- B. The City shall have a lien upon all property of any employer who fails to withhold or pay over to the City sums required by this ordinance. If the employer withholds but fails to pay the City sums required to be withheld by this ordinance, the lien shall commence as of the date the amounts withheld were required to be paid to the City. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the City.

5. REPORTING REQUIREMENTS

- A. Every employer required to deduct and withhold payroll fees pursuant to this ordinance shall annually, on or before February 28 of each year, submit a detailed employee listing indicating the amount of compensation paid to each employee.
- B. Every employer shall furnish each employee a statement on or before January 31st of each year showing the amount of payroll fees deducted by the employer from the employee's compensation and paid to the City for the preceding calendar year.

III. INFORMATION TO REMAIN CONFIDENTIAL

No present or former employee of the City shall intentionally and without authorization inspect or divulge any information acquired by said employee of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the City, 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 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 the taxpayer's own return. Further, this prohibition does not preclude any employee of the City from testifying in any Court, or from introducing as evidence returns or reports filed with the City, in an action for violation of a city law or in any action challenging a city law.

IV. PENALTIES

1. Every employer who fails to file a payroll fee return or pay the payroll fee on or before the quarterly due dates shall be subject to a penalty in an amount equal to five percent (5%) of the payroll fee due for each delinquent quarterly period. The total penalty levied by this subsection shall not be less than twenty-five dollars (\$25.00). If an employer does not withhold payroll fees required by this ordinance, and the employee is therefore responsible for payment, the employee shall be subject to the penalty described, herein.
2. In addition to the penalties described in this section, an amount equal to twelve percent (12%) per annum simple interest shall accrue on any delinquent payroll fee. A fraction of a month is counted as an entire month.
3. The City shall be entitled to recover all costs and reasonable attorney's fees incurred by the City in enforcing any provision of this ordinance.
4. Any person who violates the provisions of section III of this ordinance by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not longer than six (6) months, or both. If such violator is a city employee, such employment shall be immediately terminated.
5. Any person who violates the provisions of section III of this ordinance shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not longer than one (1) year, or both. If such violator is a City employee, said employment shall be immediately terminated.

V. USE OF PAYROLL FEE

All money derived from the payroll fee, herein, shall be paid to the City and placed to the credit of the city's general revenue fund.

VII. SEVERABILITY

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

VIII. EFFECTIVE DATE

Date of First Reading: 06/06/2019

Date of Second Reading: 07/05/2019

Date Published: 07/18/2019

Billy R. Shelton

MAYOR, CITY OF CRAB ORCHARD

ATTEST:

Nancy D. Baker

CITY CLERK