

Effective date: 7/1/87
Approved: 5/5/87

ORDINANCE NO. 87- 3

AN ORDINANCE relating to License fees upon all persons who are engaged or employed in any trade, occupation or profession within the County of Madison, for the health, education, safety, welfare and convenience of the inhabitants of Madison County, Kentucky.

BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF MADISON, COMMONWEALTH OF KENTUCKY, as follows:

ARTICLE I

DEFINITIONS.

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

1. Director of Finance: Means the official director of the occupational tax, to be appointed by the Madison Fiscal Court.
2. Treasurer: Madison County Treasurer.
3. County: Means Madison County, Kentucky, including the cities of Richmond, Berea, and any other community whether incorporated or not.
4. Business: An enterprise, activity, profession or undertaking of any nature conducted for gain or profit, whether 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 association performing the services usually performed by trade associations or unions); community chest funds or foundations; corporations or associations organized and operated exclusively for religious,

charitable, scientific, literary, education or fraternal purposes, where no part of the earnings of income or receipts of such units, groups or associations inures to the benefit of any private shareholder or individual.

5. Association: A partnership, limited partnership or any other form of unincorporated enterprise, owned by two (2) or more persons.

6. Corporation: A corporation of joint stock association organized under the laws of the United States, the State of Kentucky, or any other state, territory or foreign country or dependency.

7. Employer: An individual, co-partnership, association, corporation governmental body or unit or administration or agency, or any other entity, who or that employs one (1) or more persons on a salary, wage, commission or other compensation basis regardless of whether such employer is engaged in business as above defined, or is excluded by the terms of such definition.

8. Employee: Any person who renders services to another for a financial consideration or its equivalent, under an express or implied contract, and who is under the control and direction of the latter.

9. Sales: Net sales of merchandise or of services, or of both, computed by whatever method of accounting is authorized for federal income tax purposes.

10. Sales within Madison County: Includes sales of merchandise delivered to a customer within Madison County or service performed within Madison County for a customer.

11. Net Profit: The net income from the operation of a business or enterprise after provision for all costs and expenses incurred in the conduct thereof shall be the same as reported for federal income tax purposes, without deduction of taxes based on income.

12. Nonresident: An individual, co-partnership, fiduciary association or other entity outside Madison County.

13. Person: Every natural person, co-partnership, fiduciary, association or corporation. Whenever the term "person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to associations, shall mean the partners or members thereof and as applied to corporations, the officers and directors.

14. Resident: An individual, co-partnership, association, corporation or other entity domiciled or having a business status in Madison County.

15. Licensee: Any person required hereunder to file a return or to pay a license fee under this article.

16. Trade, occupation or profession: Shall include any and all activities and the rendering of any and all services of all kinds or other remuneration, or net profit or gain of any kind when applied to persons so engaged for themselves whether the person be a resident of Madison County or not.

17. Gross receipts: The phrase "gross receipts" and the word "compensation" when applied to a person employed by others shall have the same meaning and shall include the gross amount of all salaries, wages, commissions, bonuses or other money payments of any kind, or other consideration having a monetary value, which a person receives or becomes entitled to, or is given credit for by an employer, without deduction for withholding taxes, social security benefits, any form of insurance or retirement benefits, or other deductions made by an employer in calculating "take home pay" provided, however, that any traveling expenses actually incurred and paid by the employer, gratuities such as "tips" paid by someone, other than the employer.

18. The singular shall include the plural, the plural shall include the singular, the masculine or feminine shall include both and the neuter genders whenever susceptible to such.

ARTICLE II

REGULATION, ADMINISTRATION, ENFORCEMENT AND COLLECTION OF LICENSE FEES AND THE PURPOSE THEREOF.

1. It shall be the duty of the Director of Finance to collect all license fees and deposit the same in the General Fund of Madison County, to be used to defray the general expenses of the County Government. The Director of Finance shall have the power and it shall be his duty to make and publish such rules and regulations as may be necessary to administer this order and to provide such printed forms as may be required for reporting, paying and receipting for all such license fees and for all other requirements in the proper and efficient administration of this order.

2. The Director of Finance or any agent or employee designated in writing by him is hereby authorized upon reasonable grounds to examine the books, papers and records of any employer or supposed employer or of any licensee or supposed licensee in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of license fee imposed by the terms of this article. Each such employer or supposed employer or licensee or supposed licensee is hereby directed and required to give to the Director of Finance or his duly authorized agent or employee the means facilities and opportunity for such examinations and investigation as are hereby authorized. The Director of Finance is hereby authorized to examine any person under oath concerning any wages,

salaries, commissions, or other compensation or net profits which were or should have been returned; and to this end he may compel the production of books, papers, records, and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such wages, salaries, commissions or other compensation or net profits, to the extent that any officer empowered to administer oaths in this state is permitted to so order.

ARTICLE III

WHO MUST OBTAIN; BASIS OF COMPUTATION.

1. All persons engaged in any trade, occupation or profession within Madison County, when employed by another, shall pay a licensee fee measured by equal to one (1) percent of gross receipts paid for such service.

2. All persons engaged in any trade, occupation, or profession, within Madison County, for themselves, for profits or gain, shall pay license fee measured by and equal to one (1) percent of the net profit realized from such activity.

3. Where salaries, wages, commissions and other compensations under (1) above are earned for work done or services performed or rendered in the Madison County, such license fee shall be computed by obtaining the percentage which the compensation for work performed or services rendered with Madison County bears to the total compensation earned.

4. The net profits of business or professions from activities conducted in Madison County under (2) above shall be computed as follows: multiply the entire net profit from all sources by a business allocation percentage to be determined by:

(a) Ascertaining the percentage which the gross receipts of the license from sale or service rendered within Madison County bears to the total gross receipt from sales or services rendered where ever made.

(b) Ascertaining the percentage which wages, salaries and other personal service compensation for the period covered by the report for services performed or rendered within Madison County bears to the total wages, salaries and personal service compensation for such period of all the licensee's employees within and without Madison County.

(c) Adding together the percentages determined in accordance with subparagraphs (a) and (b) above, and dividing the total so obtained by two (2).

5. It shall be unlawful for any person to engage in any trade, occupation or profession within Madison County without notifying the Director of Finance, establishing an account with the Director and withholding, reporting, and paying the license fees herein provided and required. Portions of this order prescribing a penalty in the form of fine or imprisonment, shall mean and include the individual members of a firm, partnership, or association and the officers of any governmental body or agency or any corporation.

ARTICLE IV

DUTY OF EMPLOYER TO WITHHOLD, REPORT AND PAY LICENSEE FEES; RECORDS.

1. Each employer who employs one (1) or more persons within Madison County shall deduct monthly, or more often than monthly, at the time of the payment thereof, the license fee due from each employee measured by the amount of salaries, wages, commissions or other compensations due

by such employer to such employee and shall pay to Madison County government the amount of license fee so deducted.

2. The payment required to be made on account of deductions by employers shall be made quarterly to the Madison County government, for the quarterly periods ending the thirty-first day of March, the thirtieth day of June, and the thirtieth day of September and the thirty-first day of December, on or before the last day of the month following the quarter of such deduction; however, any employer withholding three hundred dollars (\$300.00) or more license fee during any quarter shall file a return and pay the license fee withhold monthly. The return for the first two (2) months of the quarter shall be filed on forms provided by the Madison County government within fifteen (15) days following the close of the month. The return for the third month of the quarter shall be filed by the end of the month following the close of the quarter.

3. Each employer who employs one (1) or more persons within Madison County shall, annually during the month of January of each year, make a return to the Director of Finance in which it sets forth the name and residence of each employee of such employer employed during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by such employee together with such other pertinent information as the Director of Finance may require; however, the failure or omission by any employer to deduct which license fee shall not relieve the employee from the payment of such license fee and compliance with such regulations with respect to making returns and payments thereof, as may be fixed in this article, established by the Director of Finance, of the Madison Fiscal Court.

ARTICLE V

SEPARATE RETURNS; PAYMENT, CONFIDENTIALITY

1. Each person subject to a license fee imposed by this article shall, on or before the fifteenth day of the fourth month following the close of each year, make and file with the Director of Finance a return, in duplicate, on a form furnished by or obtainable from the Director of Finance, setting forth the aggregate amount of salaries, wages, commissions and other compensation or net profits during the preceding year, with such other pertinent information as the Director of Finance may require; however, where the entire license due under this article has been withheld under the provision hereof, the Director of Finance may waive the filing of such return by such licensee; further, where the fiscal year of the business, profession or other activity differs from the calendar year and the licensee filed federal income tax return of such other fiscal period, the license fee shall be measured by the net profits of the fiscal year, and where the return is made for a fiscal year or any other period different from a calendar year such return shall be made on or before the fifteenth day of the fourth month following the end of such fiscal year or other period. Such return shall also show the amount of the license fee imposed by this article.

2. The person making the return shall, at the time of the filing thereof, pay to the Director of Finance the amount of license fees shown as due thereon; however, where any portion of license fee so due shall have been deducted at the source, credit for such amount 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 the filing of such return, as hereinabove provided; and it shall be the duty of each employer who has deducted

the license fee from the wages, salaries, commissions or other compensation referred to in Article V to furnish such employee a statement showing the amount of salary earned and license fee deducted and paid by such employer during the preceding calendar year, on or before the fifteenth day of February of each year.

3. The Director of Finance shall have the authority to extend the filing of such return in his discretion. Such extension shall be upon the written request of the licensee, however, any balance unpaid when payment is due under the terms of this article shall bear interest at the rate of eight (8) percent per annum until paid.

4. Any information gained by the Director of Finance or any other official or agent or employee of the Madison County government as a result of any returns, investigations, hearings, or verifications required or authorized by this article shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law; and any person or agent divulging such information shall, upon conviction, be subject to a fine of not exceeding one hundred dollars (\$100.00) or imprisonment of not exceeding ten (10) days or both at the discretion of the court; however, such persons may disclose to the Commissioner of Revenue of the State or his duly authorized agent all such information and right to inspect any of the books and records of the Madison County government if such Commissioner of Revenue of the State maintains the privileged character of the information so furnished to him.

5. All license fees imposed by this article remaining unpaid after they become due shall bear interest at the rate of eight (8) percent per annum, and the person from whom such license fees are due shall further be charged a penalty of one and one-half (1½) percent of the amount of the unpaid license fee for each month or fraction of a month such license

fees remain unpaid. Any person or employer who fails or refuses to withhold monthly the license fee measured by a percent of salaries, wages and other methods prescribed, or who fails to pay such money, after withholding the same, to the Director of Finance at the time it is due as provided under the terms of Article IV shall become liable for the amount due to Madison County and the same shall bear interest at the rate of eight (8) percent per annum in addition to which a penalty of four and one-half (4½) percent of such amount shall be added thereto for each month or fraction of a month said license fees remain unpaid.

ARTICLE VI

COMMENCEMENT DATE AND DURATION.

The license fees imposed by this Ordinance shall be effective beginning July 1, 1987, and shall remain in force and effect until repealed or modified according to law.

ARTICLE VII

PENALTIES FOR VIOLATIONS.

1. Any person who shall fail, neglect or refuse to make any return required by this Ordinance, or any employer who shall fail to withhold such license fees under the terms of this Ordinance, or pay over to the Madison county government fees so withheld under the terms of this Ordinance, or any person who shall refuse to permit the Director of Finance or any agency or employee designated by him in writing, to examine his books, records, papers, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of earnings or profits in order to avoid the payment of the whole or any part of the license fee shall, upon conviction, be subject for each offense to a fine or penalty not to exceed five hundred dollars

(\$500.00) and/or imprisonment for a period not to exceed one (1) year.

The defendant shall, upon conviction, pay all court costs for each offense.

2. Any person who shall engage in the occupations without first obtaining the required license therefor, or who shall fail to pay the required license fee when the same shall be due shall, upon conviction, be subject for each offense to a fine or penalty of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00) and/or imprisonment for a period not to exceed twelve (12) months; and each day that any person continues to operate without the required license shall be deemed a separate offense.

ARTICLE VIII

SEVERABILITY.

Each section and each provision of each section of this order are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person, licensee, class or group, be held unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this order. It being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of every other.

ARTICLE IX

REPEALING CLAUSE.

All orders or parts thereof in conflict with the provisions of this order are hereby repealed.

MADISON COUNTY FISCAL COURT STATEMENT
NOVEMBER 7, 1986

In the final analysis, the Fiscal court believes that while a declaratory judgement on the license fee question might find favor in the Circuit Court, it would not solidify this community in any way. Since the subsection challenged has been removed as part of the law, an action by the Fiscal Court at this time would serve neither a community nor an historical purpose.

This court is mindful of its pledge to serve the health and welfare concerns of all Madison Countians and agrees not to contest the will of the voters. Therefore, the vote against the license fee will stand. People need to understand the effective date of repeal is December 31, 1986. Refunds will not be given and those who file yearly will do so on the period June 1 - December 31, 1986.

However, the Fiscal Court must solve the problems of continuing the ambulance service, deteriorating roads and bridges, a substandard jail, solid waste management, a library, senior citizens programs, parks and recreation and economic development. These problems are both legal and moral responsibilities of this court.

As the chief governmental entity in Madison County, we cannot be tied up in legal battles or petty quarrels when action is so desperately needed. Each member of this body invites public comment and involvement in dealing with these problems, Certain of which will become real emergencies, within the next three months. We are sworn to obey the laws of the Commonwealth and to carry out our duties as elected officials. We will do so. Your support as a citizen has never been needed more. Only as working partners can Madison County become a better place for our future generations.

Ord. 87-3
Effective date 7/1/87.

Approved by the Fiscal Court this 5th day of May, 1987,

Dated: _____

MOTION TO ADOPT _____

SECONDED BY _____

VOTE:

FIRST READING

SECOND READING

FARRIS PARKS

LARRY COMBS

absent

no

FORNISS PARKS

PEGGY RICE

HAROLD BOTNER

FISCAL COURT OF MADISON COUNTY

ATTEST: _____
Clerk