

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 090973

Amending and reenacting Chapter 40, Code of Ordinances, entitled Licenses and Miscellaneous Business Regulations.

WHEREAS, Chapter 40 of the Code of Ordinances contains license tax categories for various occupations which are obsolete; and

WHEREAS, Chapter 40 contains certain regulatory provisions which are no longer necessary for the peace, health, safety and welfare of the people of the City; and

WHEREAS, Chapter 40 needs to be amended to add definitions of important terms and provisions to promote the fair and efficient administration of the business license tax; and

WHEREAS, Section 92.045 of the Missouri Revised Statutes was amended on June 19, 1992 to authorize any constitutional charter city in this state which then had or thereafter acquired a population in excess of three hundred fifty thousand inhabitants according to the last federal decennial census, to license, tax and regulate merchants, manufacturers and all businesses, avocations, pursuits and callings not exempt from the payment of licenses by law, without requiring that such businesses be specially named as taxable in the city charter; and

WHEREAS, at all times since June 19, 1992 the City of Kansas City, Missouri has had a population in excess of three hundred fifty thousand inhabitants according to the last federal decennial census, and has had, and does now have, the authority under Section 92.045 of the Missouri Revised Statutes to impose a business license tax by ordinance upon any business not exempt from the payment of licenses by law; and

WHEREAS, the City Charter, Article VIII, §812, authorizes the City to license, tax and regulate all businesses, occupations, professions, vocations, activities or things not exempt by the statutes of Missouri; and

WHEREAS, the City desires to reenact Chapter 40 of the Code of Ordinances pursuant to the authority granted by Section 92.045 of the Missouri Revised Statutes and Article VIII, §812 of the City Charter; and

WHEREAS, it is not the intent of this ordinance to impose any new tax, to increase the current levy of any existing tax, or to broaden the base of any existing tax in Chapter 40 of the Code of Ordinances; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. The following sections of Chapter 40 of the Code of Ordinances are repealed:

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Section 40-70, Anatomy, museum of;
Section 40-77, Boarding home for the aged;
Section 40-89, Check stand;
Section 40-90, Check stand, parcel;
Section 40-92, Coal peddler;
Section 40-120, Magnetic healer;
Section 40-122, Merry-go-round;
Section 40-126, Miniature railroad;
Section 40-137, Pony ring;
Section 40-139, Popcorn wagon;
Section 40-140, Poultry show;
Section 40-163, Venereal hospital;
Sections 40-241 through 40-262, Radio and television servicing;
Section 40-338. Barbershops and beauty parlors; hours and days of operation;
Section 40-354. Natural gas transportation fee.

Section 2: Chapter 40, Article I, is hereby amended by enacting a new Section 1A, titled Definitions, to read as follows:

Sec. 1A. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Kansas City, Missouri as defined by the City Charter.

Commissioner means the Commissioner of Revenue of the City of Kansas City, Missouri.

Insurance company means a corporation or association whose business is to make contracts of insurance by which it agrees to indemnify the other parties thereto from a loss or damage which they may suffer from a specified peril. An insurance company includes mutual companies and stock companies. A mutual insurance company is one whose fund for the payment of losses consists not of capital subscribed or furnished by outside parties, but of premiums mutually contributed by the parties insured. A stock company is one organized according to the usual form of business corporations, having a capital stock divided into shares, which, with current income and accumulated surplus, constitutes the fund for the payment of losses, policy-holders paying fixed premiums and not being members of the association unless they also happen to be stockholders.

Investment company means any person registered as an investment company with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940, as amended from time to time.

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Motor vehicle business means any person who would qualify as a motor vehicle dealer as defined in Section 301.550 of the Missouri Revised Statutes, as amended from time to time, and includes a new motor vehicle franchise dealer, a used motor vehicle dealer and a wholesale motor vehicle dealer, all as defined in such statute.

Person means a person as defined in Section 1-10 of the Code of Ordinances.

Securities broker or securities dealer means any person who meets the definition of a broker-dealer under the Missouri Securities Act of 2003, Sections 409.1-101 to 409.7-703 of the Missouri Revised Statutes, as amended from time to time.

Subcontractor, as used in Section 40-79 of this chapter, does not include a person who merely furnishes material or supplies without fabricating them in the performance of the building project.

Section 3. Chapter 40, Article I, is hereby amended by repealing Section 40-4, Issuance of license to association, partnership or corporation, and enacting in its place a new Section 40-4, titled Issuance of license to association, partnership, corporation or limited liability company, to read as follows:

Section 40-4. Issuance of license to association, partnership, corporation or limited liability company.

A license may be issued to any corporation, association, partnership, limited liability company, or to two or more persons engaged in any joint enterprise, the same as to a single person and for the same charge, except where otherwise specially provided.

Section 4. Chapter 40, Article I, is hereby amended by repealing Section 40-30, Claims for refund of license fee, and enacting in its place a new Section 40-30 of the same title, to read as follows:

Section 40-30 Claims for refund of the license fee.

(a) *Proof required.* Before any claim for credit or refund of alleged overpayment of the license tax shall be granted, the licensee shall present satisfactory proof in support thereof to the commissioner, such as copies of federal and state income tax returns, state sales tax returns, statements signed by certified public accountants, and original records or ledger sheets showing the amounts which were lawfully owing to the city by the licensee for the term of such license, or at the option of the commissioner of revenue, shall submit to an audit of the licensee's records at the place of business of the licensee, to be made by the commissioner of revenue or any deputy, accountant or employee if ordered to do so by the commissioner; but, if it appears from such audit that the licensee has failed to pay the true amount due for his license, or for a previous license, then such licensee shall be subject to the penalties and requirements of sections 40-22 and 40-25.

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(b) *Time limitations on credit or refund.* A claim for credit or refund of an overpayment of any tax imposed by this chapter shall be filed by the licensee within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later.

Section 5. Chapter 40, Article I, is hereby amended by enacting a new Section 40-32, titled Exemptions, to read as follows:

Sec. 40-32. Exemptions.

To the extent set forth below, the following persons or gross receipts are exempt from the requirements of the business license tax:

- (a) The United States and its agencies, the state of Missouri and its agencies;
- (b) Any state, county or municipal government and its agencies or departments;
- (c) Persons whom the City is prohibited from taxing under the Constitution or Laws of the United States, or Constitution or Laws of the state of Missouri;
- (d) Gross receipts from transactions which the City is prohibited from taxing under the Constitution or Laws of the United States, or Constitution or Laws of the state of Missouri;
- (e) Organizations that qualify for exemption from the federal income tax under Section 501 of the Internal Revenue Code, except to the extent that the organization has gross receipts from a business activity unrelated to the principal not-for-profit activity of the organization.
- (f) Any occupation, business, trade or profession not named in Article I, Section 1(57) of the former City Charter of 1925, as amended.

Section 6. Chapter 40, Article I, is hereby amended by enacting a new Section 40-33, titled Confidentiality, to read as follows:

Sec. 40-33. Confidentiality.

Except as otherwise required by law, it shall be unlawful for the Revenue Division or any employee or agent of the City to divulge, release or make known any financial information submitted or disclosed to the City under the provisions of this chapter. Nothing in this section shall be construed to prohibit:

- (a) The disclosure of:
 - (1) The name(s) of applicant(s) for a business license;

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(2) The place at which the applicant is permitted to conduct the business authorized, if the license is for such purpose, otherwise the place of business or residence of the applicant;

(3) The date of issuance of the license.

In making the above disclosure, the commissioner shall furnish to any member of the public who so requests a copy of the original license or renewed licenses and a statement as to the status of the current year's license as being in force, having lapsed, or having been revoked. The commissioner may charge a reasonable fee for the cost of providing such information.

(b) The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual licensee;

(c) The filing of any legal action by or on behalf of the City to obtain payment of unpaid accounts, and the disclosure of a licensee's financial information in a court petition, judgment or as evidence submitted to a court of law.

(d) The assignment to an outside collection agency of any unpaid account balance receivable, provided that the commissioner notifies the licensee of the unpaid balance at least 30 days prior to the assignment of the claim.

Section 7. Chapter 40, Article I, is hereby amended by enacting a new Section 40-34, entitled Waiver of penalties, to read as follows:

Sec. 40-34. Waiver of penalties

The Commissioner may waive all or any portion of penalties imposed under this chapter as a result of nonpayment of tax. This authority may be exercised at the discretion of the Commissioner under special circumstances.

Section 8. Chapter 40, Article I is hereby amended by enacting a new Section 40-35, titled Assessment, to read as follows:

Sec. 40-35. Assessment.

(a) *Circumstances for assessment.* Under any of the following circumstances, the commissioner may make and give notice of an assessment of business license tax owed by a person under this chapter:

- (1) If the person has not filed any statement or return required under this chapter;
- (2) If the person has filed a correct statement or return but has not paid the full amount of tax due as shown on the statement or return.

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- (3) If the person has filed an incorrect statement or return and owes additional taxes as determined by the commissioner.
 - (4) If the person has not, after request by the commissioner, furnished to the commissioner adequate substantiation of the information contained in a statement or return already filed.
- (b) *Assessment procedure.*

The notice of assessment shall state separately the amount of tax due together with penalty imposed thereon. The notice of assessment shall be served upon the licensee by deposit in the United States mail, postage prepaid thereon, addressed to the taxpayer at the address of the location of the business appearing on the face of the last business license issued to the taxpayer or to such other address as the taxpayer registers with the Revenue Division for the purpose of receiving notice under this chapter; or, should the person have no license issued to him and should he have no address registered with the Revenue Division for this purpose, then to such person's last known address. For purposes of this section, a service by mail is complete at the time of deposit in the United States mail. A person who has been assessed shall have thirty (30) days to respond to the assessment by (1) Paying the assessment in full and filing the necessary return(s), which shall discharge the assessment; or (2) Paying the tax under protest, including with the payment a written statement setting forth the grounds on which the protest is based, pursuant to Section 139.031 of the Missouri Revised Statutes; or (3) Requesting a conference with the commissioner pursuant to Section 40-36 of this article. If the taxpayer does not respond to the assessment, in one of the ways specified herein, within thirty (30) days of the date of mailing thereof, such assessment shall be deemed true and correct and may be recovered by the city under the provisions of Section 40-39 of this article.

Section 9. Chapter 40, Article I, is hereby amended by enacting a new Section 40-36, titled Taxpayer conferences following assessment, to read as follows:

Sec. 40-36. Taxpayer conferences following assessment.

(a) Conference request, time for making and contents. A taxpayer who disagrees with an assessment issued by the commissioner may request a conference with the commissioner of revenue by making a request in writing within thirty (30) days of the mailing of the assessment. The request shall be addressed to the commissioner and shall include the taxpayer's name, address and taxpayer identification number, a copy of the notice of assessment in dispute, the tax period(s) in dispute, a statement of the items in the assessment with which the taxpayer disagrees, and the reasons for disagreement. Documents supporting the taxpayer's position, such as federal tax returns, financial statements or other relevant documents may be submitted with the conference request. In the alternative, the taxpayer may submit such supporting documents at the conference or between the filing of the conference request and the date of the conference. The request

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may be delivered in person, by mail or by facsimile to the commissioner, but must be received in the Revenue Division within thirty days of the mailing of the assessment. Failure to timely submit the request for conference or to include the required information shall result in a denial of the request for conference.

(b) Actions on conference request. After receipt of the taxpayer's conference request, the commissioner shall mail the taxpayer a notice, at the address provided in the request, acknowledging the receipt of the conference request and notifying the taxpayer of one of the following actions taken on the request:

- (1) That a conference will be held at a date and time stated in the notice;
- (2) That the conference request was denied because the request was not timely made or the request did not contain the required information; the taxpayer shall have an additional thirty days after notification the conference request was denied to pay the tax or to pay the tax under protest pursuant to Section 139.031 RSMo.
- (3) That a conference will not be granted because the commissioner was able to make a determination on the merits from the information contained in or submitted with the request for conference; The notice shall inform the taxpayer of such determination, after which the taxpayer shall have an additional thirty days to pay the tax or pay the tax under protest pursuant to Section 139.031 RSMo.
- (4) That a conference will not be granted because the taxpayer provided new information that will be considered by the revenue agent assigned to the case, and a revised assessment will be made by the revenue agent. Any such revised assessment shall be treated as a new assessment for purposes of the taxpayer's right to respond.

(c) Continuances. The taxpayer may be granted a continuance of a scheduled conference for good cause shown. Requests for continuance must be in writing and received no later than three (3) days before the scheduled conference date.

(d) Conference procedure. Conferences shall be conducted at city hall or such other location within the city designated by the commissioner and subject to the confidentiality provisions of this chapter. The formal rules of evidence shall not apply and the conferences shall be conducted under written procedures issued by the commissioner and mailed to the taxpayer with the notice of conference. The taxpayer may be represented by an attorney licensed to practice in the State of Missouri, a certified public accountant licensed in the State of Missouri, an enrolled agent authorized to appear before the Internal Revenue Service, or such other persons as may be authorized under the regulations or in the conference procedures issued by the commissioner.

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(e) Conference determination. After the conference is held and the commissioner has considered all of the information presented, the commissioner shall make a determination affirming, reversing or revising the assessment, and shall mail the determination to the taxpayer. Failure by the taxpayer or his representative to attend a scheduled conference shall result in a determination affirming the assessment.

(f) Effect of conference on collection and time to pay under protest. The granting of a taxpayer's request for conference shall suspend collection of the assessment and extend the taxpayer's time for payment under protest of the tax pursuant to Section 139.031 RSMo until thirty (30) days after the conference determination is mailed. Payment under protest and the filing of a petition for refund in circuit court following a conference determination shall be governed by the provisions of Section 139.031 of the Missouri Revised Statutes. A conference determination shall be considered the final determination of the assessment by the commissioner, and shall be deemed true and correct and recoverable by the city if the assessment is not paid or paid under protest within thirty days of the mailing of the conference determination.

Section 10. Chapter 40, Article I, is hereby amended by enacting a new Section 40-37, titled Remedies cumulative, to read as follows:

Sec. 40-37. Remedies cumulative.

All remedies prescribed by the provisions of this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

Section 11. Chapter 40, Article I, is hereby amended by enacting a new Section 40-38, titled Payments applied, to read as follows:

Sec. 40-38. Payments applied.

Business license payments received shall first be applied to the tax due, then to any penalty imposed.

Section 12. Chapter 40, Article I, is hereby amended by enacting a new Section 40-39, titled Collection of unpaid taxes, to read as follows:

Sec. 40-39. Collection of unpaid taxes.

All taxes imposed by this chapter, together with penalties, shall be recoverable by the city as any other debt is recoverable. The city shall be entitled to recover a reasonable attorney's fee not exceeding ten percent of the tax and penalty due as costs in every suit for the collection of delinquent taxes under this chapter, as authorized by Article VIII, Section 817 of the City Charter.

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Section 13. Chapter 40, Article I, is hereby amended by enacting a new Section 40-40, titled Limitations on assessment, to read as follows:

Sec. 40-40. Limitations on assessment.

Assessment. All assessments under this chapter shall be made no later than five years from the date the return was required to be filed.

Section 14. Chapter 40, Article I, is hereby amended by enacting a new Section 40-41, titled Additional powers of commissioner, to read as follows:

Sec. 40-41. Additional powers of commissioner.

The commissioner is authorized to adopt, promulgate, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter. All such rules and regulations must be approved by the city council before they shall become effective.

Section 15. Chapter 40, Article I, is hereby amended by enacting a new Section 40-42, titled Severability, to read as follows:

Sec. 40-42. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstance shall not be affected.

Section 16. Chapter 40, Article II, is hereby amended by repealing Section 40-61, Businesses and activities for which license is required, and enacting in its place a new Section 40-61 of the same title, to read as follows:

Sec. 40-61. Businesses and activities for which license is required.

Every corporation, company, association, joint stock company or association , partnership and person, and their lessees, trustees or receivers appointed by any court whatsoever, engaged in any business occupation, pursuit, profession or trade, or in the keeping or maintaining of any institution, establishment, article, utility or commodity within the City and not exempt from the payment of licenses by law or under this chapter, shall procure and pay for a license therefor from the City, and such license tax shall be in the respective amount set out in this article and chapter, except as otherwise provided in this Code or other ordinances.

Section 17. Chapter 40, Article II, is hereby amended by repealing Section 40-64, Academy, riding, and enacting in its place a new Section 40-64, titled License taxes not to burden interstate commerce, to read as follows:

Sec. 40-64. License taxes not to burden interstate commerce

None of the license taxes provided by this chapter shall be applied as to occasion an undue burden on interstate commerce. In any case where a licensee or license applicant believes a tax under this chapter would place an undue burden on interstate commerce, such person may apply to the Commissioner for an adjustment of the tax so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such adjustment of the tax may include one based on a generally accepted method of fair apportionment to determine gross receipts derived from business transacted within the City, or an adjustment based on credits for similar taxes paid to other jurisdictions.

Section 18. Chapter 40, Article II, is hereby amended by repealing Section 40-111, Hotel, motel or tourist court, and enacting in its place a new Section 40-111 of the same title, to read as follows:

Sec. 40-111. Hotel, motel or tourist court

(a) *Amount of fee.* Every individual person or business entity as described in Section 40-61, engaged in the business of renting, leasing, or letting living quarters, sleeping accommodations, rooms or a part thereof, in connection with any hotel, motel or tourist court in the city shall pay to the city a license fee as follows:

\$1.50 per occupied room by a guest per day on all hotels, motels and tourist courts in the city.

(b) *Definitions.* Definitions for purposes of this section are as follows:

- (1) *Guest* means a person who occupies a room in a hotel, motel or tourist court.
- (2) *Hotel, motel or tourist court* means any structure or building, under one management, which contains rooms furnished for the accommodation or lodging of guests, with or without meals being so provided, and kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient guests or permanent guests, and having more than eight bedrooms furnished for the accommodation of such guests.
- (3) *Occupied room* includes a room occupied by a non-paying guest. Complimentary rooms shall be considered occupied rooms for purposes of the license fee, except for:
 - (A) Rooms donated by a hotel, motel or tourist court to families of patients receiving medical care in hospitals in the Kansas City metropolitan area;

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- (B) Rooms donated by a hotel, motel or tourist court for raffles, auctions or similar fund-raising events to benefit charitable, educational, religious or other tax-exempt organizations;
- (C) Rooms provided without charge by a hotel, motel or tourist court to meeting or convention planners during a pre-event site inspection;
- (D) Rooms provided without charge by a hotel, motel or tourist court to representatives of business entities making a visit to evaluate Kansas City, Missouri as a business location or relocation site;
- (E) Rooms provided without charge by a hotel, motel or tourist court to its employees, management or owners, or to the employees or management of its parent company or hotel or motel franchise entity.

(c) *Due date; issuance of licenses; reports.* Quarterly licenses shall be required. The license fee under this section shall be paid to the commissioner of revenue quarterly, due and payable on the following dates, for the preceding periods as listed, based on the actual number of occupied rooms within the respective period. The licensee shall make true reports on the dates listed below to the commissioner of revenue, on forms prescribed by the commissioner, giving such information that may be necessary to determine the number of occupied rooms to which the license fee shall apply within the preceding 3 month period.

Date license fee/Report due	Period Covered
April 20	January 1 through March 31
July 20	April 1 through June 30
October 20	July 1 through September 30
January 20	October 1 through December 31

The licensee must make any adjustments within 60 days of the end of the relevant quarterly license period (which is March 31, June 30, September 30 or December 31) or within 60 days after ceasing to engage in the business so licensed, whichever first occurs, on the basis of the actual number of occupied rooms to which the license fee applies during the quarterly license period. Any overpayment shall be credited to the next succeeding quarter's license fee, or otherwise paid or refunded to the licensee.

(d) *Examination of books and records.* The commissioner of revenue and his authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of the licensee as may be necessary to determine the correctness of such reports.

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(e) *Penalties for nonpayment.* For each and every month, or part thereof, any such license fee provided for under this section remains unpaid after the fee becomes due and payable, there shall be added to such license fee, as a penalty, ten percent of the amount of such license fee for the first month, or part thereof, the fee is unpaid, and for each and every month thereafter two percent of the amount of such license fee shall be added until the fee is fully paid. In no case shall the total penalty exceed 30 percent of the fee.

Section 19. Chapter 40, Article II, is hereby amended by repealing Section 40-112, Insurance company, and enacting in its place a new Section 40-112 of the same title, to read as follows.

Sec. 40-112. Insurance company

(a) Every company carrying on the business of an insurance company in the City and which is subject to the tax on direct premiums imposed by the state of Missouri, whether organized as a stock company, joint stock company, mutual company or reciprocal organization, or by means of subscribers operating by or through an attorney in fact or as an exchange or association or organization of any character, shall pay the following business license tax:

- (1) Combined fire and casualty insurance company (or commonly known as a multiple line company), per year..... \$200.00
- (2) Fire insurance company, per year..... \$200.00
- (3) Casualty company, per year..... \$100.00
- (4) Life insurance company, per year..... \$100.00
- (5) All other insurance companies subject to the tax on direct premiums imposed by the state of Missouri, per year..... \$100.00

(b) Insurance brokers shall pay the business license tax based on annual gross receipts, annual gross business or annual gross commissions of the business under Section 40-63(a) of this article.

Section 20. That the ordinances contained within Chapter 40, Articles I through VI, of the Code of Ordinances, City of Kansas City, Missouri, entitled “Licenses and Miscellaneous Business Regulations,” as amended herein, are hereby reenacted pursuant to Section 92.045 of the Missouri Revised Statutes and Article VIII, Section 812 of the City Charter. This reenactment shall be construed as a continuation, and not as a new enactment, of all ordinances included within Chapter 40 of the Code of Ordinances, and shall not be construed as being in conflict with Article XIII, Sections 1302 and 1303 of the City Charter, which provide as follows:

Sec. 1302. Continuation of taxes, assessments and fees.

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All existing taxing authorizations, assessments and fees adopted by the people of the City, or authorized by the City, are continued in full force and effect until modified or discontinued.

Sec. 1303. Ordinances to remain in force.

All ordinances, resolutions and regulations in force at the time this Charter takes effect which are not inconsistent with the provisions of this Charter, shall remain and be in force until altered, modified or repealed.

Section 21. All existing taxing authorizations, assessments, and fees contained within Chapter 40 of the Code of Ordinances are continued in full force and effect until modified and discontinued; no tax, assessment, fee, license or penalty due the City and incurred pursuant to the provisions of Chapter 40 prior to the effective date of this ordinance shall be abated, released or discharged.

Section 22. No legal action or proceeding for the recovery and collection of taxes, assessments, fees, licenses or penalties pending at the time this ordinance takes effect shall be affected or abated by the adoption of this ordinance.

Section 23. Effective Date. The amendments under this ordinance shall apply to license periods beginning after December 31, 2009.

Approved as to form and legality:

Stephen Walsh
Assistant City Attorney