

Occupational License Tax

COUNTY OF SPENCER

ORDINANCE No. 24

FISCAL YEAR 2007

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF A OCCUPATIONAL TAX REQUIREMENT, AND PAYMENT OF AN OCCUPATIONAL TAX BY PERSONS WITH OCCUPATIONS AND PROFESSIONS WITHIN SPENCER COUNTY, KENTUCKY.

WHEREAS, the Spencer County Fiscal Court desires to comply with the requirements of KRS 67.750 to 67.795 and deems it necessary and desirable to create an ordinance imposing occupational taxes on persons, occupations, and professions within Spencer County, so that an assessment and payment of Occupational Taxes can be administered.

Now, therefore, be it ordained by the Fiscal Court of Spencer County, Kentucky that Ordinance Number 24 is hereby adopted in full to read as follows:

Ordinance No. 24 is hereby enacted and shall read in full as follows:

Sections:

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§ 1 - Definitions

As used in this ordinance, the following terms and their derivatives shall have the following meanings unless the context clearly indicates that a different meaning is intended:

KRS 67.750

- (1) "Business entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) "Business" means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. "Business" shall not include a board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions as recognized by the Internal Revenue Service. "Business" shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.
- (3) "County" means the county of Spencer, Kentucky.

KRS 67.750

- (4) "Compensation" means wages, salaries, commissions, 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:
 - (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(a), 403(b), 408, 414(h), or 457 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;

KRS 67.775

- (5) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable;

KRS 67.775

- (6) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service;

KRS 67.750

- (7) "Fiscal year" means fiscal year as defined in Section 7701(a) (24) of the Internal Revenue Code;

KRS 67.750

- (8) "Employee" means any person who renders services to another person or any 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 of 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.
(a) or any employee subject to a W-2 tax reporting requirement.

KRS 67.750

- (9) "Employer" means employer as defined in Section 3401(d) of the Internal Revenue Code;

(Or - following is the definition of Section 3401 (d) of the IRC)

- (9) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:
- (a) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages, and
 - (b) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" means such person;

KRS 67.750

(10) "Internal Revenue Code" means 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, 2004, that would otherwise terminate;

(OR)

(10) "Internal Revenue Code" means the Internal Revenue Code as defined in KRS 67.750 (7).

(OR)

(10) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, of the year in which the tax is due, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, of the year in which the tax is due, that would otherwise terminate;

(11) "Person" shall mean every natural person, whether a resident or non-resident of Spencer County. Whenever the word "person" is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof;

(13) "Return" or "Report" means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with Spencer County;

KRS 67.750

(14) "Sales Revenue" means receipts from the sale, lease, or rental of goods, services, or property;

KRS 67.750

(15) "Tax district" means any county or city with the authority to levy net profits or occupational license taxes;

KRS 67.750

(16) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income is computed

§ 2 - Occupational License Application Required

- (1) Every person engaged in any trade, occupation, or profession, or other activity for profit or anyone required to file a return under this ordinance in Spencer County shall be required to complete and execute the questionnaire prescribed by the Occupational Tax Office. Each person shall be required to complete a separate questionnaire for each separate business before the commencement of business or in the event of a status change, other than change of address. Licensees are required to notify the Occupational Tax Office of changes of address, or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

§ 3 - Occupational Tax Payment Required

KRS as applies to your jurisdiction:

For example - KRS 68.197 (Counties under 30,000) reads as follows:

- (1) Except as provided in subsection (2) and subsection (5) of this section, every person engaged in any business for profit and any person that is required to make a filing with the Internal Revenue service or the Kentucky Revenue Cabinet shall be required to file and pay to Spencer County an occupational tax for the privilege of engaging in such activities within Spencer County. The occupational tax shall be measured by 2.35% of:
 - (a) all wages and compensation paid or payable in Spencer County for work done or services performed or rendered in Spencer County by every resident and nonresident who is an employee;

KRS as applies to your jurisdiction:

- (5) The occupational license tax imposed in this section shall not apply to the following persons or business entities:
 - (a) Any bank, trust company, combined bank and trust company, combined trust, banking and title business organized and doing business in this state, any savings and loan association whether state or federally chartered;
 - (b) Any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;
 - (c) Any compensation received by precinct workers for election training or work at election booths in state, Spencer County, and local primary, regular, or special elections;

- (d) Public Service Corporations that pay an ad valorem tax on property valued and assessed by the Kentucky Department of Revenue pursuant to the provisions of KRS 136.120. Licensees whose businesses are predominantly non-public service who are also engaged in public service activity are required to pay a license fee on their net profit derived from the non-public service activities apportioned to Spencer County;
- (e) Persons or business entities that have been issued a license under KRS Chapter 243 to engage in manufacturing or trafficking in alcoholic beverages. Persons engaged in the business of manufacturing or trafficking in alcoholic beverages are required to file a return, but may exclude the portion of their net profits derived from the manufacturing or trafficking in alcoholic beverages;
- (f) Insurance companies incorporated under the laws of and doing business in the Commonwealth of Kentucky except as provided in KRS 91A.080;
- (g) Any profits, earnings, distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor;

§ 4- Employers to Withhold

KRS 67.780

- (1) Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by Spencer County. Amounts withheld shall be paid to Spencer County in accordance with Section (3) of this ordinance.

KRS 67.783

- (2) Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to Spencer County, and pay to Spencer County, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by Spencer County.

KRS 67.783

- (3) Every employer who fails to withhold or pay to Spencer County any sums required by this ordinance to be withheld and paid shall be personally and individually liable to Spencer County for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.

KRS 67.783

- (4) Spencer County shall have a lien upon all the property of any employer who fails to withhold or pay over to the Spencer County sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to Spencer County, the lien shall commence as of the date the amounts withheld were required to be

paid to Spencer County. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by Spencer County.

KRS 67.783

- (5) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by Spencer County a reconciliation of the occupational tax withheld where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information, as determined by Spencer County, shall be submitted.

KRS 67.783

- (6) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational tax deducted by the employer from the compensation paid to the employee for payment to Spencer County during the preceding calendar year.

KRS 67.785

- (7) An employer shall be liable for the payment of the tax required to be deducted and withheld under this section.

KRS 67.785

- (8) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this ordinance shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid to one or more employees of any business entity, and neither the corporate dissolution or withdrawal of the business entity from Spencer County, nor the cessation of holding any corporate office, shall discharge that liability of any person; provided that the personal and individual liability shall apply to each or every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.

KRS 67.785

- (9) Every employee receiving compensation in Spencer County subject to the tax imposed under Section (3) of this ordinance shall be personally liable for the tax notwithstanding the provisions of subsections (7) and (8) of this section. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with Spencer County

each quarter in the same manner as if they were the employer. If an employer fails to or is not required to withhold, report, or pay the Occupational Fee it shall become the duty of the employee to file with Spencer County. The only employer that is not required to withhold, report, and pay the occupational tax is the Federal Government including the United States Postal Service. The payment required to be made by an employee, can be made quarterly, for the periods ending March 31st, June 30th, September 30th, and December 31st of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All Occupational fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee must annually during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

§5 - Returns Required

KRS 67.768

- (1) All business entity returns for the preceding taxable year shall be made by April 15 of 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 Spencer County.

KRS 67.768

- (2) Every business entity shall submit a copy of its federal income tax return and all supporting statements and schedules at the time of filing its occupational tax return with Spencer County. Whenever, in the opinion of Spencer County, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the Spencer County may compel the business entity to produce for inspection a copy of any statements and schedules in support thereof that have not been previously filed. Spencer County may also require copies of reports of adjustments made by the federal government.

KRS 67.760

- (3) Every business entity subject to an occupational tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as Spencer County from time to time may prescribe. Whenever Spencer County deems it necessary, Spencer County may require a business entity, by notice served to the business entity, to make a return, render statements under

oath, or keep records, as Spencer County deems sufficient to determine the tax liability the business entity.

KRS 67.760

- (4) Spencer County may require, for the purpose of ascertaining the correctness of any return or for the purposes of making 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.

KRS 67.773

- (5) The full amount of the unpaid tax payable by any business entity, as appears from the face of the return, shall be paid to Spencer County at the time prescribed for filing the occupational tax return, determined without regard to any extension of time for filing the return.
- (6) It shall be the responsibility of persons who make Federal Form 1099 "non-employee compensation" payments to natural persons other than employees for services performed within Spencer County, to maintain records of such payments and to report such payments to Spencer County. Said payments must be reported on by remitting Federal Form 1099 by February 28 of the year following the close of the calendar year in which the non-employee compensation was paid. If a business entity or person is not required to remit Federal Form 1099 to the IRS, including but not limited to payments less than \$600, they are still liable to remit the equivalent information to Spencer County. The information required to be reported by said licensee shall include:
 - (a) Payer's name, address, social security and/or Federal identification number.
 - (b) Recipient's name and address.
 - (c) Recipient's social security and/or Federal identification number.
 - (d) Amount of non-employee compensation paid in the calendar year.
 - (e) Amount of non-employee compensation earned in Spencer County for the calendar year.

§6 - Extensions

KRS 67.770

- (1) Spencer County may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by Spencer County and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational tax, requests the extension and pays the amount properly estimated as its tax.

KRS 67.770

- (2) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not been previously paid, from the time the tax was due until the return is actually filed and the tax paid to Spencer County. A fraction of a month is counted as an entire month.

§ 7 - Refunds

KRS 67.788

- (1) Where there has been an overpayment of tax under Section (5) of this ordinance, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under Section (5) by the employer;

KRS 67.788

- (2) Unless written application for refund or credit is received by Spencer County from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed;

KRS 67.788

- (3) An employee who has compensation attributable to activities performed outside Spencer County, based on time spent outside Spencer County, whose employer has withheld and remitted to Spencer County, the occupational tax on the compensation attributable to activities performed outside Spencer County, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and Spencer County may confirm with the employer the percentage of time spent outside Spencer County and the amount of compensation attributable to activities performed outside Spencer County prior to approval of the refund.

§ 8 - Federal Audit Provisions

KRS 67.775

- (1) As soon as practicable after each return is received, Spencer County may examine and audit the return. If the amount of tax computed by Spencer County 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 Spencer County within five (5) years from the date the return was filed, except as otherwise provided in this subsection.
 - (a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.

(b) 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 (6) months from the date Spencer County receives the final determination of the federal audit from the business entity, whichever is later.

The times provided in this subsection may be extended by agreement between the business entity and Spencer County. For the purposes of this subsection, 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.

KRS 67.775

(2) Every business entity shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.

KRS 67.775

(3) Spencer County may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (1) of this section.

§ 9 - Administrative Provisions

KRS 67.778

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this ordinance.

KRS 67.778

(2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to Spencer County, whichever is the later, except that:

(a) In any case where the assessment period contained in Section (9) of this ordinance has been extended by an agreement between the business entity and the Spencer County, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the

time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

KRS 67.778

(3) The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in Spencer County.

§ 10 - Information to Remain Confidential

KRS 67.790

- (1) No present or former employee of Spencer County 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 Spencer County 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 Spencer County from testifying in any court, or from introducing as evidence returns or reports filed with Spencer County, in an action for violation of a Spencer County tax laws or in any action challenging the Spencer County laws.
- (2) Spencer County reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of Spencer County if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the Spencer County the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that Spencer County may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.
- (3) In addition, Spencer County is empowered to execute similar reciprocity agreements as described in subsection (2) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance.

§ 11 - Penalties

KRS 67.790

- (1) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section (5) of this ordinance may be subject to a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

KRS 67.790

- (2) In addition to the penalties prescribed in this section, any employer shall pay, as part of the tax, an amount equal to twelve percent (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 Spencer County. A fraction of a month is counted as an entire month.

KRS 67.790

- (3) Every tax imposed by this ordinance, 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 Spencer County.
- (4) Spencer County may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, Spencer County shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.

KRS 67.790

- (6) In addition to the penalties prescribed in this section, any person, or employer who willfully fails to make a return, willfully makes a false return, or who 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.

KRS 67.790

- (7) 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 ordinance 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

KRS 67.790

- (8) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by Spencer County and required to be filed with Spencer County by the provisions of this ordinance, or by the rules of Spencer County or by written request for information to the business entity by Spencer County.

KRS 67.790

- (9) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both

KRS 67.790

- (10) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year, or both.

§ 12- Use of Occupational License Tax

Fees Collected under this ordinance shall be deposited in the Spencer County General Fund, and shall be expended for the following purposes, but not limited to:

- (1) Administrative Costs to include the interlocal agreement with the City of Taylorsville,**
- (2) Emergency Services,**
- (3) Jails,**
- (4) Parks,**
- (5) Public Protection**

§ 13 - 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 licensee, class or group, 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.

LOCAL OPTIONS
Quarterly Estimated Payments

KRS 67.758

(1) In the case where the tax computed under this ordinance is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund shall be made upon the filing of a return.

KRS 67.758

(2) (a) Overpayment resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or non payment of tax for any previous taxable year;

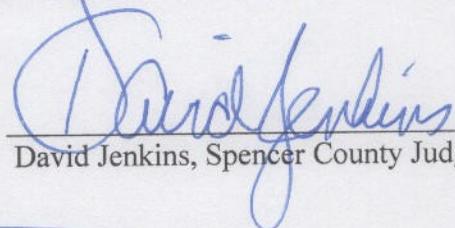
(b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this ordinance.

14 Effective Date

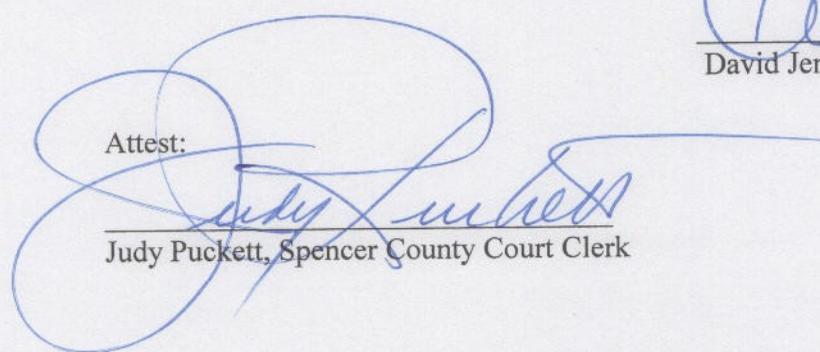
This ordinance shall take effect and be in full force on October 1, 2007 and upon it's adoption and publication as prescribed by law. All prior ordinances, resolutions, or parts thereof inconsistent with this ordinance are hereby repealed.

Given first reading and approval on 6/4/07

Given second reading and adoption on 6/21/07



David Jenkins, Spencer County Judge Executive

Attest:


Judy Puckett, Spencer County Court Clerk