AN ORDINANCE RELATED TO THE AMENDMENT OF CHAPTER 35 "TAXATION" OF SECTION 35.27 "RESTAURANT TAX" OF THE CITY OF PIKEVILLE CODE OF ORDINANCE

ORDINANCE NO. 0-2011-018

NOW, THEREFORE, BE IT ORDAINED by the City of Pikeville that **§35.27 OF THE CODE OF ORDINANCES RELATED TO "RESTAURANT TAX" SHALL BE AMENDED AS FOLLOWS:**

CHAPTER 35: TAXATION

Cross-reference:

Vacant Property Review Commission, see §§ 32.180 *through* 32.185

AD VALOREM TAXES

§ 35.01 COUNTY ASSESSMENT ADOPTED.

The Pike County assessment of property situated within this city, both real and personal, is hereby adopted.

(Ord. 0-90-025, passed 8-13-90; Am. Ord. 0-91-015, passed 8-26-91; Am. Ord. 0-92-013, passed 6-29-92; Am. Ord. 0-92-014, passed - -92; Am. Ord. 0-96-003, passed 5-30-96; Am. Ord. 0-97-001, passed 4-28-97; Am. Ord. 0-98-009, passed 4-27-98; Am. Ord. 0-2002-010, passed 9-9-02; Am. Ord. 0-2003-010, passed 9-8-03; Am. Ord. 0-2004-017, passed 10-11-04; Am. Ord. 0-2005-021, passed 9-26-05; Am. Ord. 0-2006-017, passed 10-9-06; Am. Ord. 0-2007-030, passed 10-9-07; Am. Ord. 0-2008-001, passed 1-14-08; Am. Ord. 0-2008-24, passed 10-13-08; Am. Ord. 0-2009-023, passed 9-28-09; Am. Ord. 0-2010-021, passed 9-27-10)

§ 35.02 LEVY OF TAXES.

For the purpose of providing funds for the general operating expenses of the City of Pikeville for the fiscal year from July 1, 2009 to June 30, 2010, the following taxes are levied:

(A) Upon all real estate within the city not specifically exempted from taxation situated within the city, an amount of $0.15 per one hundred dollars ($100.00) of assessed value.

(B) A tax upon all tangible personal property and franchises, not specifically exempted from taxation, a tax of $0.15 per one hundred dollars ($100.00) of assessed value.

(Ord. 0-90-025, passed 8-13-90; Am. Ord. 0-91-015, passed 8-26-91; Am. Ord. 0-92-013, passed 6-29-92; Am. Ord. 0-92-014, passed - -92; Am. Ord. 0-94-001, passed 1-24-94; Am. Ord. 0-95-004, passed - - ; Am. Ord. 0-96-003, passed 5-30-96; Am. Ord. 0-97-001, passed 4-28-97; Am. Ord. 0-98-009, passed 4-27-98; Am. Ord. 0-99-006, passed 3-22-99; Am. Ord. 0-99-012, passed 10-25-99; Am. Ord. 0-2001-022, passed 8-27-01; Am. Ord. 0-2002-010, passed 9-9-02; Am. Ord. 0-2003-010, passed 9-8-03; Am. Ord. 0-2004-017, passed 10-11-04; Am. Ord. 0-2005-021, passed 9-26-05; Am. Ord. 0-2006-017, passed 10-9-06; Am. Ord. 0-2007-030, passed 10-9-07; Am. Ord. 0-2008-001, passed 1-14-08; Am. Ord. 0-2008-24, passed 10-13-08; Am. Ord. 0-2009-023, passed 9-28-09; Am. Ord. 0-2010-021, passed 9-27-10)

Cross-reference:

Abandoned urban property tax, see §§ 35.30 through 35.36

§ 35.03 DISCOUNT.

(A) A discount of two percent (2%) of the total amount of the tax bill is hereby allowed upon all tax bills paid on or before November 1, 2010.

(B) The face amount of tax without discount or penalty shall be due for tax bills that are paid after November 1, 2010 through January 1, 2011.

(Ord. 0-90-025, passed 8-13-90; Am. Ord. 0-90-039, passed 12-27-90; Am. Ord. 0-91-015, passed 8-26-91; Am. Ord. 0-92-013, passed 6-29-92; Am. Ord. 0-92-014, passed - -92; Am. Ord. 0-95-004, passed - - ; Am. Ord. 0-96-003, passed 5-30-96; Am. Ord. 0-97-001, passed 4-28-97; Am. Ord. 0-98-009, passed 4-27-98; Am. Ord. 0-99-006, passed 3-22-99; Am. Ord. 0-99-012, passed 10-25-99; Am. Ord. 0-2000-017, passed 9-25-00; Am. Ord. 0-2001-022, passed 8-27-01; Am. Ord. 0-2002-010, passed 9-9-02; Am. Ord. 0-2003-010, passed 9-8-03; Am. Ord. 0-2004-017, passed 10-11-04; Am. Ord. 0-2005-021, passed 9-26-05; Am. Ord. 0-2006-017, passed 10-9-06; Am. Ord. 0-2007-030, passed 10-9-07; Am. Ord. 0-2008-001, passed 1-14-08; Am. Ord. 0-2008-24, passed 10-13-08; Am. Ord. 0-2009-023, passed 9-28-09; Am. Ord. 0-2010-021, passed 9-27-10)

§ 35.04 PENALTY/INTEREST.

(A) A penalty of five percent (5%) of the total amount of the tax bills that are not paid on or prior to February 1, 2011, shall be imposed and collected.

(B) A penalty of twenty-one percent (21%) of the total amount of the tax bills that are paid after February 1, 2011, shall be imposed and collected.

(C) Certificates of delinquency shall bear interest from the date of issuance until collected at the rate of twelve percent (12%) per annum.

(Ord. 0-90-025, passed 8-13-90; Am. Ord. 0-90-039, passed 12-27-90; Am. Ord. 0-91-015, passed 8-26-91; Am. Ord. 0-92-013, passed 6-29-92; Am. Ord. 0-92-014, passed - -92; Am. Ord.

0-95-004, passed - - ; Am. Ord. 0-95-004, passed - -95; Am. Ord. 0-96-003, passed 5-30-96; Am. Ord. 0-97-001, passed 4-28-97; Am. Ord. 0-98-009, passed 4-27-98; Am. Ord. 0-99-006, passed 3-22-99; Am. Ord. 0-99-012, passed 10-15-99; Am. Ord. 0-2000-017, passed 9-25-00; Am. Ord. 0-2001-022, passed 8-27-01; Am. Ord. 0-2002-010, passed 9-9-02; Am. Ord. 0-2003-010, passed 9-8-03; Am. Ord. 0-2004-017, passed 10-11-04; Am. Ord. 0-2005-021, passed 9-26-05; Am. Ord. 0-2006-017, passed 10-9-06; Am. Ord. 0-2007-030, passed 10-9-07; Am. Ord. 0-2008-001, passed 1-14-08; Am. Ord. 0-2008-24, passed 10-13-08; Am. Ord. 0-2009-023, passed 9-28-09; Am. Ord. 0-2010-021, passed 9-27-10)

§ 35.05 TAX ADMINISTRATOR.

The Tax Administrator is hereby designated and authorized to collect the tax imposed in this chapter.

(Ord. 0-90-025, passed 8-13-90; Am. Ord. 0-91-015, passed 8-26-91; Am. Ord. 0-92-013, passed 6-29-92; Am. Ord. 0-92-014, passed - -92; Am. Ord. 0-96-003, passed 5-30-96; Am. Ord. 0-2002-010, passed 9-9-02; Am. Ord. 0-2003-010, passed 9-8-03; Am. Ord. 0-2004-017, passed 10-11-04; Am. Ord. 0-2005-021, passed 9-26-05; Am. Ord. 0-2006-017, passed 10-9-06; Am. Ord. 0-2007-030, passed 10-9-07; Am. Ord. 0-2008-001, passed 1-14-08; Am. Ord. 0-2008-24, passed 10-13-08; Am. Ord. 0-2009-023, passed 9-28-09; Am. Ord. 0-2010-021, passed 9-27-10)

§ 35.06 STATUTORY AUTHORITY.

This subchapter is passed pursuant to, in compliance with, and by virtue of the authority of the following constitutional and statutory provisions, to-wit: Kentucky Constitution, 157, 170, and 181; KRS 92.280, 92.281, 92.290, 92.330, 132.010, 132.020 and 134.430.

(Ord. 0-90-025, passed 8-13-90; Am. Ord. 0-91-015, passed 8-26-91; Am. Ord. 0-92-013, passed 6-29-92; Am. Ord. 0-92-014, passed - -92; Am. Ord. 0-96-003, passed 5-30-96; Am. Ord. 0-2000-017, passed 9-25-00; Am. Ord. 0-2002-010, passed 9-9-02; Am. Ord. 0-2003-010, passed 9-8-03; Am. Ord. 0-2004-017, passed 10-11-04; Am. Ord. 0-2005-021, passed 9-26-05; Am. Ord. 0-2006-017, passed 10-9-06; Am. Ord. 0-2007-030, passed 10-9-07; Am. Ord. 0-2008-001, passed 1-14-08; Am. Ord. 0-2008-24, passed 10-13-08; Am. Ord. 0-2009-023, passed 9-28-09; Am. Ord. 0-2010-021, passed 9-27-10)

§ 35.07 EXEMPTION FROM TAX.

There shall be exempt from property taxation aircrafts not used in the business of transporting persons or property for compensation or hire as authorized by KRS 132.200.

(Ord. 0-2007-034, passed 11-26-07)

TRANSIENT ROOM TAX

§ 35.25 TAX IMPOSED; COLLECTION OF TAX.

(A) The city hereby adopts a three percent (3%) transient room tax to take effect January 1, 1986, as provided herein.

(B) Pursuant to KRS 91A.390, the room tax shall be assessed on a quarterly basis payable on the twentieth of each month for the prior quarter.

(C) The city shall, as set out in the statutes, collect the room tax and the Tax Administrator and the City Attorney shall be responsible for its collection in the event that it is not timely submitted.

(D) It shall be unlawful for any person, firm or corporation to operate a hotel or motel within this city without a hotel and motel license. Such license shall be issued by the Tax Administrator on an annual basis which shall expire on December 31 of each year. The license shall be displayed in the registration office in public view. Any person, firm or corporation who violates any provision of this division (D) shall be guilty of a misdemeanor and shall be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00) or imprisoned for not more than fifty (50) days, or both, for each offense. Each day in which any such violation occurs shall constitute a separate offense. The fines and imprisonment provided for herein shall be in addition to remedies provided for in division (E).

(E) No hotel and motel license for the operation of a hotel or motel shall be issued to any person, firm or corporation, who or which is delinquent in the payment of the tax at the time of issuing said license. All delinquent taxes shall bear interest at the rate of one and one half percent (1-1/2%) per month until paid. The city shall be entitled to a lien upon any property owned or leased by any person, firm or corporation who is delinquent in the payment of the tax due from the city after thirty (30) days or upon the property in which the hotel or motel is located by filing a notice of lien with the Pike County Court Clerk's Office. The city shall be entitled to recover all of its costs and expenses, including attorney fee, incurred in connection with the collection of any delinquent taxes. The city may revoke or suspend the hotel or motel license of any hotel or motel delinquent in the payment of the tax due the city after thirty (30) days.

(F) The city shall retain and shall not disburse to the Tourism Commission any amount equal to five percent (5%) of the transient room tax collected by the city to cover administrative costs of billing and collecting the tax.

(G) The city may revoke or suspend the liquor license issued by the Alcoholic Beverage Control Administrator of any hotel or motel which is delinquent in the payment of the tax due hereunder to the city after thirty (30) days or in such cases where the hotel and/or motel's occupational license has not been renewed or revoked by the city. The Alcoholic Beverage Control Administrator is further authorized and directed hereby to consider previous tax delinquency of the tax imposed hereunder before issuing or reissuing any alcoholic beverage license to the delinquent individual, business or corporation and in cases where the individual, business or corporation has been repeatedly delinquent in the payment of the tax imposed hereunder, the Alcoholic Beverage Control Administrator shall not renew, reissue or issue an alcoholic beverage license to such individual, business or corporation.

(Ord. 0-92-011, passed 5-27-92)

§ 35.26 TAX IMPOSED FOR EASTERN KENTUCKY EXPOSITION CENTER.

(A) A tax is hereby imposed upon all persons, companies or corporations doing business within Pike County, Kentucky as motor courts, motels, hotels, inns or like or similar accommodation businesses at the rate of one percent (1%) of gross receipts derived from the rental and occupancy of suite, room or rooms.

(B) The tax herein imposed shall be used solely for the purpose of meeting the operating expense of the Eastern Kentucky Exposition Center.

(C) The tax herein imposed may be collected by the owner or operator of the business from the occupant.

(D) For the purpose of proper administration of this subchapter, it shall be presumed that all gross receipts derived from the rental of suites, room or rooms within motor courts, motels, hotels, inns or like or similar accommodation businesses are subject to the tax until the contrary is established.

(E) The owner or operator of motor courts, motels, hotels, inns or like or similar accommodation businesses shall file on a quarterly basis with the Eastern Kentucky Exposition Center Corporation on forms to be provided by the Corporation appropriate reports setting out gross receipts for rental of suites, room or rooms for the prior quarter and shall pay to the Treasurer of the Corporation the tax imposed thereon. The report and payment shall be made and paid no later than the twentieth day of the month following the end of the taxing quarter.

(F) Any person, company or corporation who is required to file a report, who furnishes a false or fraudulent report or who fails to furnish such a report shall be subject to a civil penalty of one hundred dollars ($100.00).

(G) Any person, company or corporation who fails to pay the tax imposed herein within the time prescribed shall be assessed a civil penalty of ten percent (10%) of the tax due. All delinquent taxes shall bear interest at the rate of one and one-half percent (1.5%) per month until paid.

(H) The city shall be entitled to a lien upon any property owned or leased by any person, company or corporation who is delinquent for a period of thirty (30) days in the payment of the tax due hereunder by filing a notice of lien with the Pike County Clerk's Office. The city shall be entitled to recover all of its costs and expenses including attorney fees incurred in connection with the collection of any delinquent taxes.

(I) Nothing herein shall affect the three percent (3%) transient room tax set forth in § 35.25.

(J) The city may revoke, suspend or non-renew the liquor license issued by the ABC Administrator of any hotel, motel, inn or motor court which is delinquent in the payment of the tax due hereunder after thirty (30) days.

(KRS 91A.390)

(Ord. 0-98-025, passed 12-28-98)

§ 35.27 RESTAURANT TAX

Section
01 Definitions
02 Restaurant Tax
03 Reporting Procedures to City Council
04 Reporting Procedures for Restaurants
05 Transfer of Funds to Pikeville City Tourism & Convention Commission
06 Collection and Enforcement
07 Interest and Penalties
08 Information Deemed Confidential: Penalty for Disclosure: Exceptions
09 Duties, Director of Finance
10 Procedure for Applying for Refund or Overpayment
11 Failure to File Return; Failure to Pay the Restaurant Tax Withheld; Underpayment of amount due
12 Severability
13 Other Ordinances Not Repealed

01 Definitions:

Restaurant: As used in this chapter, restaurant means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grilles, tea rooms, sandwich shops, soda fountains, roadside stands, street vendor, catering kitchens, delicatessen, or similar places in which food is prepared for sale for consumption of the premises or elsewhere. It does not include school cafeterias which are operated by the school system and not an independent corporation, food vending machines, establishments serving beverage only in single service or original containers. Temporary food stand, operated by non-profit organizations are exempt from this tax. Applies to food and beverages (excluded alcoholic drink that are taxed under §111.17.

Commission: The Pikeville Tourism and Convention Commission

02 Restaurant Tax.

On and after July 15, 2011, there is hereby levied upon the retail sale of all food and beverages by a restaurant located within the municipal limits of the City of Pikeville a tax equal to one and one-half percent (1.5%) of the gross amount of each sale (excluding any other tax). This tax may or may not be passed on to the ultimate customer/consumer at the discretion of the restaurant.

03 Reporting Procedures to City of Pikeville

A. The funds collected from this tax shall be maintained by the City Tax Administrator in a special fund managed by the City Finance Director and disbursed to the Commission monthly. All such money shall

be used solely for the purpose of promoting recreational, convention and tourist activity in the City of Pikeville, as set out in KRS Section 91A.390, and shall not be used to provide a subsidy in any form to any motel, hotel or restaurant.

B. The Commission must obtain approval from the City Commission of the City of Pikeville prior to using any revenues from the restaurant tax for the purposed of capital improvements including the purchase or acquisition of land. In the event that an approved capital project must be debt serviced by bonds or bonded by the City of Pikeville the Commission will pledge amounts agreed upon by the Commission and City Commission necessary to satisfy principal and interest payments of the bond issue.

C. The Commission is strongly encouraged to obtain approval from the City Commission of Pikeville for any projects that are estimated at a cost of $10,000 or more. In obtaining the approval, the Commission must provide the City Commission a complete copy of any and all plans, data, research, appraisals, blueprints, etc. regarding the project.

D. The Commission will continue to provide its annual budget to the City Commission.

E. The Commission shall provide a monthly written report to the City Commission which includes all income, expenditures, disbursements, and request pertaining to restaurant tax funds.

04 Reporting Procedures for Restaurants.

On or before the twentieth (20th) day of each calendar month, each restaurant owner and/or operator shall report to the City Tax Administrator on forms provided by the City of Pikeville the gross amount of sales of the restaurant from food and beverages for the preceding calendar month, and calculation of the tax due for that month by computing one and one-half percent (1.5%) of its gross sales from food and beverages. The owner/operator of the restaurant shall remit with the form the tax due to the City Tax Administrator.

05 Transfer of funds to Pikeville City Tourism and Convention Commission.

On or before the last day of each calendar month, the City Director of Finance shall transfer to the Pikeville City Tourism and Convention Commission the gross of monies collected from the restaurant tax collected as of the 25th of the current month. The Pikeville City Tourism and Convention Commission shall reimburse the City of Pikeville five percent (5%) of the tax collected as reimbursement for the costs of collections, including but not limited to the cost of reporting forms, postage, court cost, attorney's fees and all other expenses incurred in collection of this tax by the fifth (5th) day following the monthly transfer of funds.

06 Collection and Enforcement.

A. It shall be the duty of the City Tax Administrator to collect and receive the restaurant tax imposed by this Ordinance.

B. The City Tax Administrator shall keep records showing the amount paid by each restaurant owner and/or operator and the date of such receipt.

C. The City Tax Administrator is hereby charged with the enforcement of provisions of this Ordinance, and is hereby empowered to prescribe, adopt and promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of the ordinance, including but not limited to provisions of the reexamination and correction of returns to which and underpayment or overpayment is claimed or found to have been made, and the rules and regulations as promulgated by him

shall be binding upon the taxpayer. Provided, however, all such rules, regulations and decisions shall be subject to the consent and approval of the City Manager, Mayor and City Commission.

D. The City Tax Administrator, or any agent or employee designated by him or her in writing, may examine the books, papers, and records of any restaurant in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of restaurant tax imposed by the terms of this ordinance as he or she may deem is reasonably necessary for the purpose incident to the performance of his or her duties hereunder. The City Tax Administrator may enforce this right by application to the appropriate court having jurisdiction over these matters.

E. The City Tax Administrator may dispense with examination of the books, papers, and records of any taxpayer in any case where the City Tax Administrator is furnished with a certificate of a qualified Certified Public Accountant, or the sworn statement of any other reputable accountant or bookkeeper stating that the amount of restaurant tax reported conforms to the State or Federal Income Tax Return filed for the applicable period.

F. A restaurant owner and/or operator who collects the restaurant tax from one (1) or more persons and who fails to file a return and make payments therewith shall in addition to the penalties prescribed herein upon conviction be subject to a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or imprisonment for not more than thirty (30) days, or both such fine and imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed within this Ordinance.

07 Interest and Penalties.

A. Any person who fails to file any return required within the afore stated time due to who fails to pay such restaurant tax when same shall become due, shall be charged a penalty of ten Percent 10%) of the amount of the unpaid restaurant tax for each month such return remains un-filed or tax unpaid, not exceeding a penalty of Twenty-Five Percent (25%) in the aggregate.

B. All restaurant taxes imposed by this Ordinance which remain unpaid after they become due shall bear interest at the rate of one and one-half of one percent (1.5%) per month (or part thereof).

C. Any person who shall fail, neglect or refuse to make any return or pay any tax due required by this Ordinance, or to pay the city those so withheld under the terms of this Ordinance, or any person who shall refuse to permit the City Finance Director or any agent or employee designated by him in writing, to examine books, records, and papers pertaining to information required under this Ordinance, or who shall knowingly make any incomplete, false, or fraudulent return, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of gross receipts in order to avoid the payment of the whole or any part of the restaurant license tax, shall become liable to the city for such tax as well as the interest and penalty thereon, and shall in addition, be subject to a fine of not less than FIFTY DOLLARS ($50.00) or more than FIVE HUNDRED DOLLARS ($500.00) or imprisonment for not less than thirty (30) days, each day of non filing constituting a separate offense. Such criminal penalties shall be in addition to the penalties imposed above.

08 Information Deemed Confidential; Penalty for Disclosure: Exceptions.

Any information, including returns, documents, or payments made pursuant hereto and any other information gained by the City Tax Administrator or any other official, agent, or employee of the City of Pikeville as a result of any return, investigation, hearing or verification required or authorized by the ordinance shall be confidential; except, in accordance with proper judicial order, and any person or agent

divulging such information shall, upon conviction, be subject to a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) or imprisonment not to exceed Thirty (30) days, or both, at the discretion of the court, and upon conviction shall be dismissed from employment by the City. Provided, however, such person may disclose to the Commissioner of the Revenue Cabinet of the state or his or her duly authorized agent, or the other Commissioner of Internal Revenue Service, or his or her duly authorized agent, all such information and extend the right to inspect any of the books and records of the City to said Commissioner of the Revenue Cabinet of the state and/or to said Commissioner of the Internal Revenue Service who must grant to the City the reciprocal right to obtain information from the files and records of the Internal Revenue Service and maintains the privileged character of the information so furnished to them.

09 The City Tax Administrator, or any agent or employee designated by him or her in writing, shall have the following duties in connection with the restaurant tax.

A. Keep accurate records of all returns and of all sums received for restaurant taxes. Such records shall contain the names and addresses of each taxpayer, and the dates and amounts of payments. He or she shall keep the original returns on file for a period of not less than three (3) years after filing.

B. Enforce the provisions of this Ordinance, all in accordance with any policies set forth in any ordinance, municipal order, or executive order.

C. Prepare forms and instructions for the returns and payments required by this Ordinance. All instructions shall be clear and shall be as short as possible.

D. Examine returns. And for any returns appearing to be correct, made inquiries, investigations, and adjustments in the amount of tax due.

E. Where necessary to determine accurate figures for determining the amount of tax due, examine books, records, and information stored in computers of any taxpayer, provided that each city officer or employee acting under this ordinance shall identify himself or herself and request the information desired. If the officer or employee is refused admission to any place of business or refused access to any records or computer memory, the City Tax Administrator or employee shall leave the premises and shall seek an appropriate court order, with the assistance of the city attorney, to obtain access to the information needed.

F. The City Tax Administrator shall approve the form of all returns and written instructions prior to use by an agent or employee designated by him or her in writing.

G. The City Tax Administrator may prepare pamphlets for distribution to the public, clearly explaining the restaurant tax, returns, and payments required.

10 Procedures for Applying for Refund of Overpayment.

A. Any taxpayer (pursuant to this Ordinance) who truly believes that he has made or permitted an overpayment of his or her liability for any restaurant tax required by this Ordinance may apply for refund of said overpayment provided that he or she files an amended return, verified under oath and setting forth in detail the full explanation of the reason of the said claimed overpayment of his or her liability, within one (1) year of the date of said overpayment is made or the date he or she said restaurant tax payment was due, whichever occurs first.

B. If a refund has been properly claimed according to the provisions of paragraph A above, then the City Director of Finance, with the Tax Administrator's written approval shall have the authority to honor and refund any such overpayment actually made above actual liability upon the restaurant tax required under this Ordinance which he or she determines within his or her sole discretion was made through honest mistake or inadvertence.

C. In no event shall any refund be made for any payment upon any restaurant tax unless the refund claim is submitted and filed in strict compliance with the foregoing provisions of this section upon such refund claim forms or amended return forms as hereafter shall be promulgated by the City Tax Administrator from time to time.

11 Failure to File Return, Failure to Pay the Restaurant Tax Withheld, Underpayment of Amount Due.

A. If the taxpayer liable for collecting the restaurant tax and filing a return fails to make a return, the City Tax Administrator shall prepare an estimate of the amount of restaurant taxes due based on the best information available to them. The City Tax Administrator may make investigations to assist in making the estimate. He or she may consider the volume of business done in the same type of business, and any other relevant maters. When the City Tax Administrator estimates the restaurant taxes, the amount of interest and late charges provided by this Ordinance shall be added to the taxes due. He or she shall notify the taxpayer of the amount due. Such notification shall be in writing and shall contain a brief description of the method and estimated figures used in arriving at the estimated tax. Any taxpayer may dispute the amount of the estimated tax by filing within thirty (30) days of notification of the estimated taxes a return accompanied by payment of the entire balance due together with the interest and late charges due. Such return shall be processed like any late return, and shall establish the restaurant tax liability of the taxpayer in place of the estimated amount prepared by the City Tax Administrator. However, the City Tax Administrator may later determine that the amount shown in the return is insufficient so there is a deficiency, in the same manner as in the case of other returns.

B. If the City Tax Administrator determines, by examining available evidence, that the amount of restaurant taxes paid over by the taxpayer is less than the amount required by this Ordinance, he or she shall notify the taxpayer of the deficiency. The City Tax Administrator may use any of the methods authorized in paragraph A of the section to determine whether a deficiency exists and to determine the amount of such deficiency. He or she shall thereupon notify the taxpayer of the deficiency. Such notice shall be in writing and shall state not only the amount of the deficiency but also the methods and estimates used in arriving at the amount of the deficiency. If the taxpayer does not object in writing within thirty (30) days of the date of receiving such notice, the taxpayer shall be deemed to have accepted the revised figures for the restaurant tax liability. If the taxpayer does file written objection within the time specified, the taxpayer shall pay the fees, together with penalties and interest, under protest and may thereupon pursue administrative and judicial remedies as provided by this Ordinance and by state law to seek a refund.

C. If the City Tax Administrator finds that any taxpayer has overpaid, he or she shall notify them of overpayment and shall refund the amount of the overpayment to them.

D. When the City Tax Administrator notifies any taxpayer of any estimated amount due, alleged overpayment, or refund, he or she shall include in the notice clear instructions on how, when, and where the taxpayer may protect or appeal the decision.

E. If any taxpayer or any person, firm, association, or corporation required by this ordinance to pay a restaurant tax or to file a return shall fail to file any return for any month, such failure to file shall

constitute a continuing offense against the city and the City Tax Administrator may proceed to estimate and collect the restaurant taxes at any time. In all other cases, no increases shall be made in the taxpayer's restaurant tax liability unless the first notice of such increase is received by the taxpayer within three (3) years of the time the return was first due.

12 Severability.

The provisions of this Ordinance are severable. If any sentence, clause, section, or part of this Ordinance or the application thereof to any particular case is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionally, illegality, or invalidity shall not affect or repeal any of the remaining provisions, sentences, clauses or sections or parts of this Ordinance, it being the legislative intent of the City Commission of Pikeville to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of each other.

13 Other Ordinances Not Repealed.

Nothing contained herein shall be deemed to repeal or modify any other ordinance heretofore enacted and in force in the City of Pikeville unless specifically repealed by separate ordinance.

Nothing herein shall affect the 3% alcoholic beverage tax set forth in the Alcoholic Beverage Ordinance 111.17 and the tax provided for herein shall be in addition to the alcoholic beverage tax.

ABANDONED URBAN PROPERTY TAX

§ 35.30 DEFINITION.

For the purposes of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED URBAN PROPERTY.

(1) Any vacant structure or vacant unimproved lot or parcel of ground in the City of Pikeville which has been vacant or unimproved for a period of at least one (1) year and which:

(a) Because it is dilapidated, unsanitary, unsafe, varmint infested, or otherwise dangerous to the safety of persons, it is unfit for its intended use;

(b) By reason of neglect or lack of maintenance has become a place for the accumulation of trash and debris; or has become infested with rodents or other varmints; or

(c) Has been delinquent for a period of at least three (3) years;

(2) Any property in the city that has been identified as "blighted" or "deteriorated" by the Vacant Property Review Commission.

(Ord. 0-2005-06, passed 4-25-05)

§ 35.31 TAX RATE.

The rate of taxation levied upon abandoned urban properties is one dollar and fifty cents ($1.50) on each one hundred dollars ($100.00) of assessed value.

(Ord. 0-2005-06, passed 4-25-05)

§ 35.32 ABANDONED URBAN PROPERTY LISTING.

The Code Enforcement Department shall each year determine which properties in the city are abandoned urban properties and shall prepare and furnish a list of abandoned urban properties located in the city to the city Finance Department and the Pike County Property Valuation Administrator prior to January 1 of each year.

(Ord. 0-2005-06, passed 4-25-05)

§ 35.33 REMOVAL FROM LIST.

Except as otherwise provided in § 35.34, a property classified by the Code Enforcement Department as abandoned property as of January 1 shall be taxed as abandoned urban property for such year. If the owner repairs, rehabilitates, or otherwise returns the property to productive use so that the property is no longer abandoned urban property, he or she shall notify the city, which shall, if it finds the property no longer abandoned urban property, notify the Finance Department and the Pike County Property Valuation Administrator to strike the property from the list of abandoned urban properties as of the succeeding January 1.

(Ord. 0-2005-06, passed 4-25-05)

§ 35.34 APPEAL.

No later than March 1 of each year, the Code Enforcement Department shall mail, by first class mail to owners of each abandoned urban property, as those names are listed in the records of the Property Evaluation Administrator, a notice that this property has been classified as abandoned urban property. The owner of any abandoned urban property who believes that his, her or its property has been incorrectly classified may appeal such classification to the Vacant Property Review Commission. Such appeal shall be in writing and shall be made no later than April 1 of that year. The Commission shall afford the owner the opportunity for a hearing. If the Commission finds that the property is incorrectly classified as abandoned urban property, it shall cause the property to be removed from the list of property so classified. The Commission shall develop policies and procedures for conducting such appeals.

(Ord. 0-2005-06, passed 4-25-05)

Cross-reference:

Vacant Property Review Commission, see §§ 32.180 through 32.185

The ordinance shall be in full force and effect after it is passed and published as required by law.

The above ordinance was given first reading this 23rd day of May, 2011.

the ordinance was given a second reading on the 13th day of June, 2011.

Passed this 13th day of June, 2011.

Commissioner Layne moved for the adoption of the foregoing ordinance.

Commissioner Chaney seconded the motion.

Upon roll call, the votes were as follows:

	YES	NO
FRANK JUSTICE. MAYOR	Abstain	
GENE DAVIS. COMMISSIONER	X	
DALLAS LAYNE. COMMISSIONER	X	
JIMMY CARTER. COMMISSIONER	X	
BARRY CHANEY. COMMISSIONER	X	

The Mayor declared the within ordinance adopted.

FRANK JUSTICE II, MAYOR

ATTESTED:

Christy Billiter

CHRISTY BILLITER, CITY CLERK