

ARTICLE 30. - RESTAURANT AND DRINKING PLACE OCCUPATION TAX

3-3001 - INTENT AND PURPOSE

- A. The City Council determines that persons engaging in restaurant and drinking place businesses are benefited from tourism and recreational activity that places unique demands on the City's resources but which is activity that should be promoted and encouraged. Further, residents and non-residents who patronize these businesses are enjoying a discretionary activity that is dependent upon, and generating revenue from, the business's location within the city and the business's access to the services provided by the city. Subjecting the business's revenue to taxation for general city purposes is fair, reasonable, and just.
- B. Pursuant to the authority of Nebraska Revised Statute R.R.S. 1943, Section 16-205, the City Council finds, determines, and declares that restaurant and drinking place business form a discrete class of occupation engaged in within the City and it is appropriate that a tax be imposed on this class of businesses for the purpose of constructing a youth baseball/softball complex and an indoor sports complex. This determination is made with due recognition of the inherent value of business conducted within the City and the relation business has to the municipal welfare and the expenditures required of the City, and with consideration of the just, proper and equitable distribution of tax burdens within the City.
- C. The City Council further determines that some activity or revenue that might fall within the scope of this ordinance should be excluded from its scope because (i) the activity has a primary purpose other than to generate revenue for the business by the sale of food or drink, (ii) because the revenue is generated from activity that does not have the discretionary characteristics and qualities that support using restaurant or drinking place revenue as a measure of taxation, and/or, (iii) the sale of food or drink is primarily intended to encourage and support civic, charitable, educational, or religious activities of a nonprofit corporation.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015; Ord. No. 8553, § 1, 2-8-2022, effective January 1, 2023)

3-3002 - DEFINITIONS

As used in this Article, the following words and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

- A. *DRINKING PLACE* shall mean any establishment offering on premises consumption of food and/or non-alcoholic beverages. Beginning January 1, 2023, Drinking Place shall mean any establishment offering on premises consumption of food and/or alcoholic and non-alcoholic beverages. Such businesses include, but are not limited to, bars, taverns, night clubs, dance halls, restaurants, and arenas.
 - 1. The term does not include a place offering beverages on premises owned or operated by a civic, charitable, educational, religious, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code.
- B. *FOOD* shall include all edible refreshment or nourishment, whether solid, semi-solid, liquid or otherwise.
- C. *PERSON* shall mean any natural person, individual, partnership, association, organization or corporation of any kind or character engaging in the business of operating a drinking place or restaurant.
- D. *RESTAURANT* shall mean any place that is kept, used, maintained, or advertised as a place where food is prepared and sold for immediate consumption on the premises. It shall also include the sales of food in a restaurant with facilities for consumption on the premises even if the food and beverages are not actually

consumed on the premises, including the receipts from prepared "take out," "drive through," or "to go" food.

1. This term includes, but is not limited to, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters, sandwich stands, temporary stands, grocery stores, convenience stores, supermarkets, arenas, push carts, lunch wagons, ice cream trucks, or other mobile facilities from which food ready for consumption is sold. The term includes a space or area within a hotel, motel, bed and breakfast, boarding house, hospital, office building or reception hall where food is sold or consumed if a separate charge is made for such food. A restaurant may also be a drinking place.
2. The term does not include:
 - (i) a place operated by a religious, civic, educational, charitable, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code where food is offered solely to its members or students;
 - (ii) a public or private daycare center that offers food solely to its employees or the children staying at the center;
 - (iii) a convalescent home, nursing home, home for the aged or infirmed, or substance abuse facility that offers food solely to its residents;
 - (iv) premises where food is obtained solely from vending machines operated by coin, cards, or other per-purchase operation regardless of whether the food may be consumed on the premises;
 - (v) temporary stands at festivals or other similar events from which food ready for consumption is sold unless entrance to the place at which the food is sold is subject to an admission charge; or
 - (vi) a place offering food on premises owned or operated by a civic, charitable, educational, religious, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code.

E. *TAXPAYER* shall mean any person engaged in the business of operating a drinking place or restaurant as herein defined who is required to pay the tax herein imposed.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015; Ord. No. 8087, 6-28-2016; Ord. No. 8553, § 2, 2-8-2022, effective January 1, 2023)

3-3003 - TAX IMPOSED; COLLECTION OF TAX

- A. Beginning February 1, 2015 at 4:00 a.m. and in each calendar month thereafter there is hereby imposed a restaurant and drinking place occupational tax upon each and every person operating a drinking place or restaurant within the City for any period of time during a calendar month. The amount of such tax shall be one percent (1%) of all gross receipts for each calendar month derived from the drinking places and restaurant subject to this tax. Such tax shall be imposed on the gross receipts resulting from the sales of food within the corporate limits of the City which are subject to the sales and use tax imposed by Article 22 of Chapter 3 of the Kearney City Code.
- B. The person engaged in operating a drinking place or restaurant may itemize the tax levied on a bill, receipt, or other invoice to the purchaser, but each person engaged in such business shall remain liable for the tax imposed by this Article.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015)

3-3004 - RETURN; ADMINISTRATIVE FEE

- A. Each and every person engaged in the business of operating a drinking place or restaurant within the City shall prepare and file, on or before the 25th day of January, April, July, and October of each year on a form prescribed and furnished by the Director of Finance, a return for the taxable three-month period, and at the same time pay to the City the tax herein imposed. The return shall be verified and sworn to by the officer in charge of the business. The return shall be considered filed on time if mailed in an envelope properly addressed to the Director of Finance, postage prepaid and postmarked before midnight of the 25th of the appropriate month.
- B. As reimbursement for the cost of collecting the tax, a taxpayer may deduct and withhold from the taxes otherwise due and paid two percent (2%) of the amount paid to the City.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015)

3-3005 - TAX CUMULATIVE

- A. The levy of the tax under this Article is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract or any other provisions of this Code or ordinances of the City, in addition to any fee, tax, excise or license imposed by the state.
- B. Payment of the tax imposed by this Article shall not relieve the person paying the same from payment of any other tax now or hereafter imposed by contract or ordinance or by this Code, including those imposed for any business or occupation he or she may carry on, unless so provided therein. The occupational taxes imposed by this Article shall be cumulative except where otherwise specifically provided.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015)

3-3006 - USE OF REVENUE

The one percent (1%) occupation tax imposed by this Article shall be used for the purpose of constructing a youth baseball/softball complex and an indoor sports complex.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015; Ord. No. 8553, § 3, 2-8-2022, effective January 1, 2023)

3-3007 - FAILURE TO FILE RETURN; DELINQUENCY; ASSESSMENT BY DIRECTOR OF FINANCE

- A. If any person neglects or refuses to file a return or make payment of the taxes as required by this Article, the Director of Finance shall make an estimate, based upon such information as may be reasonably available, of the amount of taxes due for the period or periods for which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess in addition thereto (1) interest on such delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the date when due and, when applicable, (2) a penalty equal to ten percent (10%) thereof.
- B. The Director of Finance shall give the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice must be served personally or by certified mail.
- C. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Director of Finance ten (10) days from the date of service of the notice or the date of mailing by certified mail; however, within such ten (10) day period the delinquent taxpayer may petition the Director of Finance for a revision or modification of such assessment and shall, within such ten-day period, furnish the Director of Finance the facts and correct figures showing the correct amount of such taxes.
- D. Such petition shall be in writing, and the facts and figures submitted shall be submitted in writing and shall be

given under oath of the taxpayer.

- E. Thereupon, the Director of Finance may then modify such assessment in accordance with the facts which he or she deems correct. Such adjusted assessment shall be made in writing, and notice thereof shall be mailed to the taxpayer within ten (10) days; and all such decisions shall become final upon the expiration of thirty (30) days from the date of service, unless proceedings are commenced within that time for appeal in the District Court.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015)

3-3008 - ADMINISTRATION OF ARTICLE; MISCELLANEOUS PROVISIONS

- A. The administration of the provisions of this Article are hereby vested in the Director of Finance, or his/her designee, who shall prescribe forms in conformity with this Article for the making of returns, for the ascertainment, assessment and collection of the tax imposed hereunder, and for the proper administration and enforcement hereof.
- B. All notices required to be given to the taxpayer under the provisions of this Article shall be in writing. Notices shall be mailed by registered or certified mail, postage prepaid, return receipt requested, to the taxpayer at his or her last known address.
- C. It shall be the duty of every taxpayer to keep and preserve suitable records and other books or accounts as may be necessary to determine the amount of tax for which he/she is liable hereunder.
1. Records of the gross revenue by which this tax is measured shall be kept separate and apart from the records of other sales or receipts in order to facilitate the examination of books and records as necessary for the collection of this tax.
 2. It shall be the duty of every such taxpayer to keep and preserve for a period of four (4) years all such books, invoices and other records, which shall be open for examination at any time by the Director of Finance or his/her duly designated persons. If such person keeps or maintains his books, invoices, accounts or other records, or any thereof, outside of the state, upon demand of the Director of Finance he/she shall make the same available at a suitable place within the City, to be designated by the Director of Finance, for examination, inspection and audit by the Director of Finance or his/her duly authorized persons. The taxpayer shall reimburse the City for the reasonable costs of the examination, inspection and audit if the Director of Finance determines that the taxpayer paid ninety percent (90%) or less of the tax owing for the period of the examination.
 3. The Director of Finance, in his/her discretion, may make, permit or cause to be made the examination, inspection or audit of books, invoices, accounts or other records so kept or maintained by such person outside of the state at the place where same are kept or maintained or at any place outside the state where the same may be made available, provided such person shall have entered into a binding agreement with the City to reimburse it for all costs and expenses incurred by it in order to have such examination, inspection or audit made in such place.
- D. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the Director of Finance or his/her duly authorized persons, may conduct investigations concerning any matters covered by this Article; and may examine any relevant books, papers, records or memoranda of any such person.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015)

3-3009 - RECOVERY OF UNPAID TAX BY ACTION AT LAW

- A. The Director of Finance may also treat any such taxes, penalties or interest due and unpaid as a debt due the City.
- B. In case of failure to pay the taxes, or any portion thereof, or any penalty or interest thereon when due, the City may recover at law the amount of such taxes, penalties and interest in any court of Buffalo County, Nebraska or of the county wherein the taxpayer resides or has its principal place of business having jurisdiction of the amounts sought to be collected.
- C. The return of the taxpayer or the assessment made by the Director of Finance, as herein provided, shall be prima facie proof of the amount due.
- D. The City Attorney may commence an action for the recovery of taxes due under this Article and this remedy shall be in addition to all other existing remedies, or remedies provided in this Article.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015)

3-3010 - SUSPENSION OR REVOCATION OF LICENSES FOR FAILURE TO PAY TAX; HEARING

If the City Manager or the City Manager's designee, after holding a hearing, shall find that any person has willfully evaded payment or collection and remittance of the tax imposed by this Article, such official may suspend or revoke any City license, permit or other approval held by such tax evader. Said person shall have an opportunity to be heard at such hearing to be held not less than seven (7) days after notice is given of the time and place of the hearing to be held, addressed to the last known place of business of such person. Pending the notice, hearing and finding, any license, permit or other approval issued by the City to the person may be temporarily suspended. No suspension or revocation hereunder shall release or discharge the person from civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015)

3-3011 - SUNSET PROVISION

The occupation tax imposed by this chapter shall terminate and collections of the tax shall cease no later than January 31, 2042 at 12:00 P.M.

(Ord. No. 7945, 11-25-2014, effective February 1, 2015; Ord. No. 8553, § 4, 2-8-2022, effective January 1, 2023)