



City of Grand Island

Tuesday, August 19, 2014

Special Meeting - Updated

Item X-1

Food and Beverage Occupation Tax Ballot Language

Staff Contact:

Council Agenda Memo

From:

Meeting: August 19, 2014

Subject: Food and Beverage Occupation Tax Ballot Language

Item #s: X-1

Presenter(s):

Background

Any ballot measure for voter consideration in the 2014 general election would need to be submitted to the Hall County Election Office no later than September 2, 2014. A resolution approved by the City council is required prior to the submittal of a ballot measure.

Discussion

Some citizens and council members have indicated a desire to explore the renewal of the food and beverage occupation tax when the current tax expires December 31, 2015 as a result of Ordinance 9315 approved by council on August 11, 2011.

The ability to raise revenue by levying and collecting an occupation tax is governed by Nebraska State Statutes 16-205 and 18-1208. Nebraska State Statute 18-1208 became effective July 19, 2012 and requires any new occupation taxes or rate increases of existing occupation taxes for cities of the first class to be subject to voter approval.

The City Attorney has opined an election is necessary to continue the occupation tax given the tax expires and any future food and beverage occupation tax is new and falls under Nebraska State Statute 18-208.

For discussion purposes, it is assumed the rate would remain at 1.5%, today's current rate. The budgeted revenue for the 2015 budget is \$1,584,317.

The draft language assumes the revenue would commence January 1, 2016, effectively as soon as the existing food and beverage occupation tax expires. It is difficult to set the exact allocation of the consumption tax given the tax dollars collected will increase/decrease on a year-over-year basis. The following is a potential allocation:

- Provide a funding source for the Nebraska State Fair host city expense (2015 budget amount is \$425,000).
- Remainder of the revenue would be dedicated to the city's capital improvement projects.

Draft ballot language is as follows:

Shall the City of Grand Island levy an occupation tax on the consumption of food and beverages at the rate of 1.5% to benefit the community through the provision of a funding source for the required funding for the Nebraska State Fair host city expense with the remainder of the revenue being dedicated to the city's capital improvement projects? The tax would become effective January 1, 2016.

ORDINANCE NO. 9315

An Ordinance to amend Grand Island City Code, Article VII, the Food Services, Drinking Places, and Restaurant Tax; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

WHEREAS, the City of Grand Island finds it necessary to amend Grand Island City Code §23-65 to further clarify and delineate the intent and purpose of Article VII, the Food Services, Drinking Places, and Restaurant Tax, with regard to the use of revenue derived from said tax,

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

I. That Grand Island City Code §23-65 be amended to read as follows:

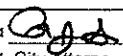
§23-65 Intent and Purpose of Article

(A) The City Council determines and declares that persons engaging in, carrying on, or pursuing any food services, drinking places business, or restaurant are directly or indirectly benefited from tourism, that places unique demands on the City's resources, but which is an activity that should be promoted and encouraged. Further, people who patronize a business for food and drinking places purposes within the City and the areas within the corporate limits of the same are exercising a privilege and generating revenue subject to taxation.

(B) Pursuant to the authority of Nebraska Revised Statute R.R.S. 1943, Section 16-205, the City Council finds, determines and declares that it is appropriate that a tax be imposed on all food services, drinking places businesses, and restaurants as herein defined for the purpose of raising revenues. The foregoing determination is made with due consideration of business in the City and the relation of business to the municipal welfare, together with relation thereof, to expenditures required by the City, and with consideration of just, proper and equitable distribution of the tax burdens within the City and other properly associated matters.

(C) That revenue derived from Grand Island City Code, Article VII - the Food Services, Drinking Places, and Restaurant Tax shall be designated for use in the following order:

(i) To make the City's required debt payments on the fieldhouse and the Recreational Field development as required by Grand Island City Code §23-79(A) and (B). If any surplus remains after meeting these obligations then that surplus shall be designated;

Approved as to Form	<input checked="" type="checkbox"/>	
August 10, 2011	<input checked="" type="checkbox"/>	City Attorney

ORDINANCE NO. 9315 (Cont.)

(ii) To make the City's quarterly payments to the Nebraska State Fair Support and Improvement Fund as required by Neb Rev. Stat. §§2-108-110. If any surplus remains after meeting the obligations as stated in Grand Island City Code §23-65(C)(i) and (ii) then that surplus shall be designated;

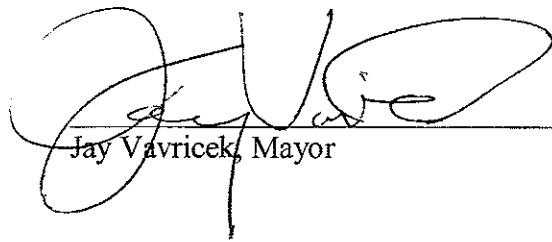
(iii) To make any additional voluntary payments on the City's debt as the Council shall so designate.

II. Any ordinances or parts of ordinances in conflict are hereby repealed.

III. The Sunset Provision for the Food Services, Drinking Places, and Restaurant Tax as codified in Grand Island City Code §23-79 is not affected by this Ordinance and remains in full force and effect.

IV. This ordinance shall be in full force and will take effect from and after its passage and publication on October 1, 2011.

Enacted: August 11, 2011.



Jay Vavricek, Mayor

ATTEST:



RaNae Edwards, City Clerk

16-205. License or occupation tax; power to levy; exceptions.

A city of the first class may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business within the limits of the city and may regulate the same by ordinance. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. All such taxes shall be uniform in respect to the class upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

Source: Laws 1901, c. 18, § 48, IX, p. 247; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4821; C.S.1922, § 3989; C.S.1929, § 16-206; R.S.1943, § 16-205; Laws 1993, LB 121, § 135; Laws 2012, LB745, § 5; Laws 2014, LB474, § 4.

Effective Date: March 27, 2014

Annotations

City of the first class may impose an excise, license, or occupation tax upon a given class of business, when such tax is definite, reasonable, and uniform. *Gooch Food Products Co. v. Rothman*, 131 Neb. 523, 268 N.W. 468 (1936).

City by ordinance may levy and collect an occupation tax from a telegraph company though part of its business is interstate, and such tax is not measured by the profits thereof. *City of Grand Island v. Postal Telegraph Cable Co.*, 92 Neb. 253, 138 N.W. 169 (1912).

A property tax, based upon the value of a corporate franchise, and an occupation tax based upon gross earning of such company, are in nowise identical and do not constitute double taxation. *Lincoln Traction Co. v. City of Lincoln*, 84 Neb. 327, 121 N.W. 435 (1909).

Where a city ordinance imposes an occupation tax, and provides a special means of enforcing it, such method is generally exclusive, and if the only method is illegal, the ordinance as a whole is inoperative as the courts will not substitute a different and legal method of enforcement. *City of Omaha v. Harmon*, 58 Neb. 339, 78 N.W. 623 (1899).

Under prior act an ordinance for an occupation tax on a telegraph company doing both inter and intrastate business from within the city is valid and will be presumed to be a tax on that part of such business, as is intrastate, unless the act imposes such tax on the gross income. *Western Union Telegraph Co. v. City of Fremont*, 39 Neb. 692, 58 N.W. 415, 26 L.R.A. 698 (1894).

Statutory provision authorizing cities to levy and collect occupation taxes is not repugnant to the Constitution, and while a provision making it a misdemeanor to conduct business, without first obtaining a license, and declaring a penalty or imprisonment, for such failure, is void, yet so much of the theory as fixes a civil liability is unaffected and valid. *Templeton v. City of Tekamah*, 32 Neb. 542, 49 N.W. 373 (1891).

The levy and collection of an occupation tax are not repugnant to the terms of the Constitution. *Magneau v. City of Fremont*, 30 Neb. 843, 47 N.W. 280 (1890), 9 L.R.A. 786 (1890), 27 A.S.R. 436 (1890).

Cities and villages may impose an occupation tax on liquor dealers, but a municipality may not make payment of such tax a condition precedent to the issuance of a license. *State ex rel. Sage v. Bennett*, 19 Neb. 191, 26 N.W. 714 (1886).

18-1208. Occupation tax; imposition or increase; election; procedure.

(1) Except as otherwise provided in this section, after July 19, 2012, a municipality may impose a new occupation tax or increase the rate of an existing occupation tax, which new occupation tax or increased rate of an existing occupation tax is projected to generate annual occupation tax revenue in excess of the applicable amount listed in subsection (2) of this section, pursuant to section 14-109, 15-202, 15-203, 16-205, or 17-525 if the question of whether to impose the tax or increase the rate of an existing occupation tax has been submitted at an election held within the municipality and in which all registered voters shall be entitled to vote on the question. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax or tax rate increase to the election commissioner or county clerk at least fifty days before the election. The election shall be conducted in accordance with the Election Act. If a majority of the votes cast upon the question are in favor of the new tax or increased rate of an existing occupation tax, then the governing body of such municipality shall be empowered to impose the new tax or to impose the increased tax rate. If a majority of those voting on the question are opposed to the new tax or increased rate, then the governing body of the municipality shall not impose the new tax or increased rate but shall maintain any existing occupation tax at its current rate.

(2) The applicable amount of annual revenue for each new occupation tax or annual revenue raised by the increased rate for an existing occupation tax for purposes of subsection (1) of this section is:

- (a) For cities of the metropolitan class, six million dollars;
- (b) For cities of the primary class, three million dollars;
- (c) For cities of the first class, seven hundred thousand dollars; and
- (d) For cities of the second class and villages, three hundred thousand dollars.

(3) After July 19, 2012, a municipality shall not be required to submit the following questions to the registered voters:

(a) Whether to change the rate of an occupation tax imposed for a specific project which does not provide for deposit of the tax proceeds in the municipality's general fund; or

(b) Whether to terminate an occupation tax earlier than the determinable termination date under the original question submitted to the registered voters.

This subsection applies to occupation taxes imposed prior to, on, or after July 19, 2012.

(4) The provisions of this section do not apply to an occupation tax subject to section 86-704.

Source: Laws 2012, LB745, § 1.

Cross References

Election Act, see section 32-101.