

City of Scottsbluff, Nebraska

Monday, October 3, 2016

Regular Meeting

Item Resolut.2

Council to consider an Ordinance providing for a new 1 ½% restaurant occupation tax, effective January 1, 2017 (third reading).

Staff Contact: Nathan Johnson, City Manager

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR A NEW OCCUPATION TAX ENTITLED FOOD SERVICE, DRINKING PLACES AND RESTAURANT TAX, REPEALING PRIOR SECTIONS LOCATED IN CHAPTER 6, ARTICLE 6 AND CHAPTER 11, ARTICLE 2 OF THE SCOTTSBLUFF MUNICIPAL CODE, PROVIDING FOR PUBLICATION IN PAMPHLET FORM AND PROVIDING FOR AN EFFECTIVE DATE.

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

Section 1. Chapter 6, Article 6 of the Scottsbluff Municipal Code is amended by repealing the existing language and substituting the following language:

“6-6-18. Occupation taxes.

The occupation tax referred to elsewhere in the municipal code shall be upon each of the following occupations and businesses (except as provided in such section) in amounts, respectively, as follows:

- A -

Alcohol, alcoholic liquors. Per year-	
Manufacture of alcohol and spirits	\$1,000.00
Catering Licensee.....	200.00
Manufacture of beer	500.00
Manufacture of wine	500.00
Alcoholic liquor (except beer) wholesaler	1,000.00
Beer wholesaler	250.00
A - retailer of beer only, for consumption on premises	200.00
B - retailer of beer only, for consumption off premises (sale in original packages only)	200.00
C - retailer of alcoholic liquors for consumption on premises and off premises (sale in original packages only), except nonprofit corporation which is a club.	600.00
C - retailer of alcoholic liquors, including beer for consumption on the premises only, nonprofit corporation which is a club	150.00
D - retailer of alcoholic liquors, including beer, for consumption off premises sale in original packages only)	400.00
I - retailer of alcoholic liquors, for consumption on premises only.....	500.00
Special Designated License, except for special designated license issued to a holder of a catering license	50.00 per day
Non-beverage User	
Class 1	5.00
Class 2	25.00
Class 3	50.00
Class 4	100.00
Class 5	250.00

- B -

Billboard advertising, bill posting, thrust upon public view or attention from billboards located upon private property, or elsewhere, for pay or hire, by persons, firms or corporations - Per Year	\$ 25.00
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- D -

Dog kennels	
Kennel authorized to keep less than five (5) dogs	
Per Year	25.00
Kennel authorized to keep five (5) dogs or more	
Per Year	50.00

- F -

Fire insurance company or association Per Year	5.00
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Food and Beverages Retailer and Restaurant . . . 1½% of all gross receipts as defined in Section 11-2-6

- H -

Hawkers and peddlers
Per Week..... 5.00
Per Year 25.00

- P -

Pawnbrokers
Per Year 100.00

Petroleum products, refineries of
Per Year 250.00

Pet shop
Per Year 50.00"

- R -

Retail Business Occupation Tax . . . One half percent (0.50%) of all General Retail Business Transactions which the State of Nebraska is authorized to impose a tax as allowed by the Nebraska Local Option Revenue Act and which are subject to sales and use tax within an agreed Enhanced Employment Area, except any transaction which action which is subject to tax under Sections 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602 or 77-4009 of the Nebraska Revised Statutes or which is exempt from tax under 77-2704.24 of the Nebraska Revised Statute.

Section 2. Chapter 11, Article 2 of the Scottsbluff Municipal Code is amended by amending Section 11-2-4 and adding new Section 11-2-6 through 11-2-11 to provide as follows:

“11-2-4. Tax; term; when due; generally.

Except as provided in the provisions of this Article pertaining to Class C liquor licenses, General Retail Business Transactions within an agreed Enhanced Employment Area and Food and Beverages Retailer and Restaurant tax, on all occupations and businesses upon which such tax is levied at a yearly rate the year for such tax shall be deemed to begin with the first day of May of each year and shall end on the last day of April following; and such tax for each year shall be due and payable, in advance, on the first day of May of every year, and thereafter such tax shall be delinquent. The whole amount of every occupation tax levied at a daily or yearly rate must be paid in one (1) payment before the occupation or business is commenced, whether payment is made at the beginning of the day or year, or at any time thereafter; and no payment made at the beginning of the day or year shall be for any certain time less than such day or year. The whole amount of the tax on the manufacture, distribution or sale of alcoholic liquor shall be paid immediately after the final issuance of a license to the applicant under the Nebraska Liquor Control Act; provided, however, when there is a purchase of an existing licensed business and a new license of the same class is issued, or upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance. The tax on food and beverages retailer and restaurant services shall be paid according to the section of this Article concerning that tax.

“11-2-6 Same; Food Services, Drinking Place or Restaurants.

- (A) On or after January 1, 2017 and in each calendar month thereafter, there is imposed a food and beverages retailer and restaurant occupation tax upon each and every person operating a commercial establishment within the City for any period of time during a calendar month. The amount of such tax shall be one and one half percent (1½%) of all gross receipts for each calendar month derived from the sale of food and beverages subject to this tax.
- (B) The person engaged in the sale of food and beverages may, but is not required, to itemize the tax levied on a bill, receipt or other invoice to the purchaser, but each person engaged in the sale of food or beverages shall remain liable for the tax imposed by this section.

(C) Gross receipts subject to the tax shall include receipts from the sale of food and beverages excluding receipts from the sale of food or beverages exempt from or not otherwise subject to Nebraska Sales and Use Tax provided by the Nebraska Revenue Act of 1967 as amended from time to time.

(D) The following definitions shall apply:

(1) Beverage shall mean all substances, whether in liquid or frozen form, sold for ingestion by humans and are consumed for their taste or nutritional value, provided that beverage shall not include alcoholic beverages and shall only include non-alcoholic beverages.

(2) City shall mean City of Scottsbluff and the area within the corporate limits of the City of Scottsbluff.

(3) Commercial establishments shall mean any retail location in the City that sells food or beverages as herein defined.

(4) Food shall mean substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value, excluding beverages as defined herein and tobacco products.

(5) Gross receipts shall mean the total amount of consideration, donations, contribution, or monetary charges of any nature paid to obtain food or beverage without any deduction on amount of expenses, taxes or other costs. Notwithstanding anything herein to the contrary, the term gross receipts shall not include:

(a) Receipts from the sale of food or beverages exempt from or not otherwise subject to Nebraska Sales and Use tax as provided by the Nebraska Revenue Act of 1967 as amended from time to time;

(b) The value of food or beverages furnished by the commercial establishment to employees as part of their compensation when no charge is made to the employee; and

(c) Tips to an employee of a food services and restaurant when the amount of the tip is wholly in the discretion of the purchaser, whether or not the tip is paid to the employee or added to the bill, and if the amount of the tip is turned over to the employee. Amounts that are added to the price of the meal and required to be paid by the purchaser, whether or not designated as a tip or a service charge, shall be exempt as a tip to the extent a mandatory amount does not exceed twenty-five percent (25%), of the food and beverage sales price.

(6) Finance Director shall mean the Finance Director of the City of Scottsbluff.

(7) Person shall mean any natural person, individual, partnership, association, organization or corporation of any kind or character engaging in retail sales of food or beverages and may be referred to as taxpayer herein.

(8) Retail shall mean the sale for use or consumption and not for resale in any form.

(9) Retail location shall mean any permanent, temporary or mobile place, location or facility where retail sales occur, including but not limited to, brick and mortar locations, mobile trucks and temporary stands.

(10) Sale or to sell shall mean any transfer of possession for consideration, donation, contributions, or monetary charges of any nature paid to obtain or for access to food or beverage.

(11) Taxpayer shall mean any person operating a commercial establishment herein defined who is required to pay the tax herein imposed.

(E) The tax imposed by this Article is purely for revenue purposes to support the programs of the government of the City of Scottsbluff. 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 provision of the Municipal Code or Ordinances of the City of Scottsbluff, in addition to any fee, tax, excise or license imposed by the State. Payment of the tax imposed by this Article shall not relieve the person paying the same from payment of any other tax now or hereinafter 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. It is the intent of the Scottsbluff City Council that the occupation taxes imposed by this Article shall be accumulative except where otherwise specifically provided.

- (F) Each and every person operating a commercial establishment within the City for the calendar month beginning January, 2017, and for each and every calendar month thereafter, shall prepare and file, on or before the 25th day of the month or the next business day should the 25th fall on a Federal holiday or weekend, following on a form prescribed by the Finance Director, a return for the taxable calendar month. The tax imposed herein shall be due and payable to the Finance Director on the first day of each calendar month next succeeding the month during which the food and beverage was sold. Any return that is remitted via the United States Postal Service shall be postmarked by the 25th day of the month to be considered an on-time filing. A commercial establishment may make reports and remittances quarterly in lieu of monthly if their monthly remittance would be \$100 or less.
- (G) If any person neglects or refuses to make a return or payment of the taxes as required by this Article, the Finance Director 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 a penalty equal to ten percent (10%) thereof, together with interest of such delinquent tax, at a rate of one percent (1%) per month, or fraction thereof from the date when due. The Finance Director shall give the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice must be served personally or by certified mail. Such estimate shall thereupon become an assessment and such assessment shall be final and due and payable from the taxpayer to the Finance Director ten (10) days from the date of service of the notice of the date of mailing by certified mail; however, within such ten (10) day period, the delinquent taxpayer may petition the Finance Director for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Finance Director the facts and correct figures showing the correct amount of taxes. Any petition by the taxpayer shall be in writing, and the facts and figures submitted shall be submitted in writing and shall be given under oath of the taxpayer. Thereupon, the Finance Director shall modify such assessment in accordance with the facts 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 expiration of thirty (30) days from the date of service, unless proceedings are commenced within that time for an appeal in the District Court of Scotts Bluff County, Nebraska by the filing of a petition with the clerk of the court. This appeal shall be conducted in conformance with the Nebraska Rules of Civil Procedure and rules of the court as may be adopted by the court or enacted by the Legislature.
- (H) It shall be the duty of every taxpayer to keep and reserve suitable records and other books or accounts as may be necessary to determine the amount of tax for which he or she is liable hereunder. The records of gross revenue by which the 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. It shall be the duty of every taxpayer to keep and preserve for the period of four (4) years all such books, invoices and other records, which shall be open for examination at any time by the finance director or his or her duly designated persons. Such person keeps or maintains their books, invoices, accounts or other records or any thereof, outside of the State, upon demand of the Finance Director, they shall make the same available at a suitable place within the City, to be designated by the Finance Director, for examination, inspection and audit by the Finance Director or his or her duly authorized persons. The duties of the Finance Director herein provided may be performed by any qualified person designated by the Finance Director.
- (I) The administration of the provisions of this section are vested in the Finance Director who shall prescribe forms in conformity with this section for the making of returns, for the ascertainment, assessment and collection of the tax imposed hereunder and for proper administration and enforcement hereof. The Finance Director may adopt such rules and regulations as may be necessary or desirable for the administration and enforcement of

this Article. This section shall be enforced according to this Article for all occupation taxes payable within the City.”

“11-2-7. Payment; procedure.

The occupation tax levied pursuant to this Article shall be paid to the City Finance Director and the City Finance Director shall keep a proper account of such taxes.”

“11-2-8. Tax moneys; fund.

All amounts realized from the collection of the occupation tax levied pursuant to this Article shall be placed to the credit of the General Fund to be used for infrastructure improvement projects or such other fund or funds as designated by the City Council.”

“11-2-9. Refund; prohibited.

Except as otherwise provided for in this Article, no person, persons, partnership, association, firm or corporation paying such occupation tax shall be entitled to a refund of any part of the tax so paid.”

“11-2-10. Nonpayment; distress proceedings.

Upon the failure of any person, persons, partnership, association, firm or corporation to pay such tax when demand is made by the City, the City Finance Director is authorized to issue a distress warrant over the corporate seal, directed to the Police Chief and commanding the Police Chief forthwith to collect, by distress and sale of goods and chattels for the person, persons, partnership, association, firm or corporation in such warrant named, the occupation tax due and unpaid. The Police Chief for their services shall be entitled to such fees out of the property distrained and sold as sheriffs receive for making levy and sale under execution. The costs created by reason of the distress sale shall be paid out of the property levied upon, in addition to the amount due on the occupation tax.”

“11-2-11. Enforcement.

Should any person, persons, partnership, association, firm or corporation fail to pay such tax when demand is made by the City, the City may recover the same, together with any applicable interest and penalties, in a civil action brought against such person, persons, partnership, association, firm or corporation. This remedy shall not be exclusive of any other type of proceeding available to the City, but shall merely be cumulative.”

Section 3. Previously existing Sections 6-6-18 and 11-2-6 through 11-2-11, and all other Ordinances and parts of Ordinances in conflict herewith are repealed; provided, however, this Ordinance shall not be construed to affect any rights, liabilities, duties or causes of action, either criminal or civil, existing or actions pending at the time when this Ordinance becomes effective.

Section 4. This Ordinance shall become effective upon its passage, approval and publication shall be in pamphlet form.

PASSED AND APPROVED on _____, 2016.

Mayor

ATTEST:

City Clerk

(Seal)

APPROVED:

City Attorney