

City of Scottsbluff, Nebraska

Monday, July 29, 2019

Regular Meeting

Item Reports3

Council to discuss and consider action on the hotel occupation tax.

Staff Contact: Nathan Johnson, City Manager

ORDINANCE RECORD

ORDINANCE NO. 4210

AN ORDINANCE PROVIDING FOR A NEW OCCUPATION TAX ON HOTEL ACCOMMODATIONS; REPEALING PRIOR SECTIONS LOCATED IN CHAPTER 6, ARTICLE 6 AND CHAPTER 11, ARTICLE 2 OF THE SCOTTSBLUFF MUNICIPAL CODE, AND PROVIDING PUBLICATION IN PAMPHLET FORM AND 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

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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

- H -

Hawkers and peddlers

Per Week 5.00

Per Year 25.00

Hotel Accommodations 4% of gross receipts as defined in Section 11-2-6

- 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 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 Statutes."

Section 2. Chapter 11, Article 2 of the Scottsbluff Municipal Code is amended by amending Sections 11-2-4 and adding new Sections 11-2-6 through 11-2-11 and repealing the existing language in Sections 11-2-6 through 11-2-10 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 hotel accommodations, 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 hotel accommodations shall be paid according to the Section of this Article concerning such tax."

"11-2-6. Same; hotel accommodations.

(A) Commencing on July 1, 2017, every person, entity, or association engaged in the business of offering or providing hotel accommodations to the public within the City, shall pay to the City an occupation tax equal to a percentage set out in Chapter 6, Article 6 on the gross receipts

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of the basic rental rates charged per occupied room per night for hotel accommodations. For purposes of this section, the following definitions shall apply:

- (1) Hotel shall mean any facility in which the public may, for a consideration, obtain sleeping accommodations in any space ordinarily used for accommodations. The term shall include hotels, motels, tourist homes, campgrounds, courts, lodging houses, inns, a bed and breakfast and nonprofit hotels but hotel shall not be defined so as to include hospitals, sanitariums, nursing homes, chronic care centers, or dormitories or facilities operated by an educational institution and regularly used to house students.
- (2) Occupied room shall mean any space ordinarily used for sleeping accommodations and for which any occupant has, for consideration, obtained the use or possession, or the right to use or possess, for a period not to exceed thirty (30) continuous days. The term shall include camping space, trailer space or recreational vehicle space. The term does not include a function room such as a ballroom, banquet room, reception room, or meeting room, provided it is not used as temporary sleeping accommodations.
- (3) Basic rental rate shall mean the monetary charge for the use of an occupied room in a hotel.
- (4) Hotel operator shall mean any person, entity, association, partnership or corporation engaged in the business of offering or providing hotel accommodations, and may be referred to as taxpayer herein.
- (5) The term occupied room shall not mean, and no tax imposed by this Article shall be measured by or collected for:
 - a. Complimentary or other sleeping accommodations for which no consideration is charged;
 - b. Sleeping accommodations for which the consideration is paid by a person not subject to sales and use tax imposed by the Nebraska Revenue Act of 1967, as it is amended from time to time; or
 - c. Sleeping accommodations leased by an employer for use by its employees when a specific room is the subject of the lease, the lease extends for more than thirty (30) consecutive days, and consideration is actually paid for use during at least thirty (30) consecutive days.

(B) The Tax imposed by this Article shall be collected by the hotel operator from the occupant of each room to which the tax applies. The tax may be shown as an add-on to the charge for occupancy of the rooms and shall be collectible at the time the lodging is furnished, regardless of when the charge for the occupancy is paid. The hotel operator shall remain responsible for payment of all taxes imposed whether or not the taxes are actually collected from the guests.

(C) 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.

(D) It shall be unlawful for any hotel operator subject to this Article to fail to maintain or fail to make available to the City, upon seventy-two (72) hours notice, written records accurately and completely evidencing the number of rooms occupied, the dates the rooms are occupied, the amount of occupation tax due or paid under this Article, and such other information as is required by the Finance Director of the City. Such records shall be maintained for a period of three (3) years after the occupation tax is due.

(E) Notwithstanding any contrary provision of this Chapter, or Code, the tax imposed by this Article shall be due and payable on the first day of each calendar month next succeeding the month during which the room was occupied. All taxes not paid by the twenty-fifth (25th) day of the month in which they are due and payable shall be deemed to be delinquent. The hotel operator shall be assessed a penalty of ten percent (10%) on all delinquent amounts as well as interest of one percent

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(1%) per month or fraction thereof from the first of the month in which such tax becomes due and payable until the date of payment.

(F) Each and every hotel operator within the City for the calendar month beginning July, 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, and pay to the Finance Director the tax imposed by the first of day of the month as set forth in paragraph (E) above. 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 hotel operator may make reports and remittances quarterly in lieu of monthly if their monthly remittance would be \$100 or less.

(G) If any hotel operator 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 and for proper administration and enforcement. 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 the occupation taxes payable within the City."

"11-2-7. Payment; procedure; receipt.

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."

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"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 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 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."

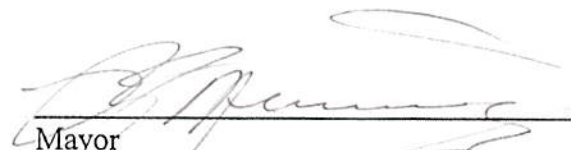
"11-2-11. Enforcement.

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 May 15, 2017


Mayor

ATTEST:


City Clerk



Approved:

City Attorney

CERTIFICATE OF PASSAGE

County of Scotts Bluff) §
City of Scottsbluff)

I, Cynthia A. Dickinson, City Clerk of the City of Scottsbluff, Scotts Bluff County, Nebraska, hereby certify that the annexed Ordinance purporting to be Ordinance No. 4210 of said City was passed as such by the Mayor and City Council of the City of Scottsbluff, Scotts Bluff County, Nebraska, pursuant to the rules and regulations prescribed by general law and by said City for the passage of Ordinances, and was duly approved by the Mayor of said City, passage and approval having been made on the 15TH day of May, 2017 with respect to said Ordinance aforesaid which said Ordinance No. 4210 has been published in pamphlet form by authority of the Mayor and Council of said City under direction of its duly constituted authorities pursuant to resolution of the Mayor and Council thereof with copies made available to the public on such date at the office of the City Clerk.

IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of
Scottsbluff, Scotts Bluff County, Nebraska, this 15TH day of May, A. D., 2017.

Cynthia A. Dickinson
City Clerk

Subscribed and sworn to before me this 15TH day of May, 2017.



Christine Burbach
Notary Public