

ORDINANCE NO. 1199

AN ORDINANCE TO ADOPT AN OCCUPATION TAX TO BE KNOWN AS THE RESTAURANT AND DRINKING PLACES OCCUPATIONAL PRIVILEGE TAX TO BE LEVIED UPON PERSONS ENGAGED IN THE BUSINESS OF OPERATING RESTAURANT AND DRINKING PLACES IN THE CITY OF RALSTON; TO PROVIDE FOR A RATE OF SAID TAX; TO PROVIDE FOR THE COLLECTION OF SAID TAX; TO PROVIDE FOR RECORD KEEPING WITH REGARD TO SAID TAX; TO PROVIDE FOR PENALTIES FOR DELINQUENCY IN THE PAYMENT OF TAX; TO PROVIDE FOR USE OF REVENUE AND PROVIDE FOR AN EFFECTIVE DATE; AND TO PUBLISH IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF RALSTON, NEBRASKA.

That on the 29 day of September 2015, the Ralston City Council conducted a regularly scheduled public hearing at which it considered the adoption of an occupation tax to be known as the Restaurant and Drinking Places Occupational Privilege Tax to be levied upon persons engaged in the business of operating restaurants and drinking places in the City of Ralston. Upon consideration of said proposed occupation tax, the Ralston City Council approved the following enactment.

I.

ARTICLE 17 - RESTAURANT AND DRINKING PLACES OCCUPATIONAL PRIVILEGE TAX

- Sec. 10-1700 - Definitions.
- Sec. 10-1701. - Intent and purpose of article.
- Sec. 10-1702. - Tax imposed.
- Sec. 10-1703. - Tax imposed for revenue purposes; tax cumulative.
- Sec. 10-1704. - Return and administration fee.
- Sec. 10-1705. - Suspension or revocation of other licenses.
- Sec. 10-1706. - Failure to file return; delinquency; assessment by Treasurer.
- Sec. 10-1707. - Jeopardy assessment.
- Sec. 10-1708. - Administration of article; miscellaneous provisions.
- Sec. 10-1709. - Recovery of unpaid tax by action at law.

- Sec. 10-1710. - City a party to title actions for determination of lien.
 - Sec. 10-1711. - Authority of Treasurer to waive penalty.
 - Sec. 10-1712. - Penalties.
 - Sec. 10-1713. - Severability.
 - Sec. 10-1714. – Periodic Review; Sunset.
- **CHAPTER 10 - ARTICLE 17 - RESTAURANT AND DRINKING PLACES OCCUPATIONAL PRIVILEGE TAX**
- **Sec. 10-1700. - 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:

City shall mean the City of Ralston and the area within the corporate limits of the City of Ralston.

Treasurer shall mean the Treasurer of the City of Ralston.

Drinking place shall mean any establishment or business offering the public on-premises consumption of alcoholic and/or nonalcoholic beverages including, but not limited to, bars, taverns, night clubs, and dance halls and concession stands at race tracks, golf courses, sports and meeting facilities, arenas, or stadiums. A drinking place may also be a restaurant.

(1)

The term does not include any business offering beverages free of charge. The term "free of charge" means without any consideration, donation, contributions, or monetary charges of any nature paid for access to the beverages and, without limitation, requires the absence of any admission charge, cover charge, table reservation fee, gate charges, seat charges, entertainment fee, green fees, or required minimum purchase of beverages or merchandise.

(2)

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.

Engaged in shall mean to offer to the public, carry on, or take part in the operation of a business as owner, operator, or agent. A person renting or using a facility for a taxable activity or service, either as a one-time event or otherwise, shall be considered to be engaged in the business.

Food shall mean all edible refreshment or nourishment, whether solid semi-solid, or liquid. The term shall not include:

(1)

Any food that is not subject to the sales and use tax imposed by the Nebraska Revenue Act of 1967, as it is amended from time to time; and

(2)

Snack foods, which shall mean unopened bottles or cans of soft drinks, chewing gum, candy, popcorn, peanuts and other nuts, unopened packages of cookies, donuts, crackers, and potato chips, and unopened packages of other items of essentially the same nature which are consumed for essentially the same purpose and which are packaged for home consumption.

Gross receipts shall mean the total amount of consideration, donation, contributions, or monetary charges of any nature paid to obtain or for access to food or beverage without any deduction on account of expenses, taxes, or other costs.

(1)

The term includes, without limitation:

(i)

The price charged for food or beverages;

(ii)

Any admission charge, cover charge, membership fee, table reservation fee, gate charges, seat charges, or entertainment fee or similar payment if the payment gives the payee a right to obtain food or beverage which is otherwise subject to this tax;

(iii)

The amount paid to a person engaged in a business or activity by vendors or contractors who provide food or beverages to that person's customers on the premises and which are within the scope of this tax; and

(iv)

Receipts from the sale of beverages or food in a restaurant or drinking place even if it is not actually consumed on the premises, including the receipts from prepared "take out," "drive-through," or "to go" food.

(2)

The term does not include:

(i)

The value of food or beverages furnished by restaurants or drinking places to employees as part of their compensation when no charge is made to the employee.

(ii)

Tips to an employee when the amount of the tip is wholly in the discretion of the purchaser and the full amount of the tip is turned over to the employee, whether or not the tip is paid to the employee or added to the bill.

(iii)

The amount of any tax levied and paid upon food or beverage sales pursuant to R.R.S. §77-2703 and R.R.S. §77-27,142.

(iv)

Payments made to a caterer by a civic, charitable, educational, religious, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code for food or beverage delivered to the premises of the organization.

Person shall mean any natural person, individual, partnership, association, organization or corporation of any kind or character engaging in a restaurant business.

Restaurant shall mean any place that is kept, used, maintained, advertised, or held out to the public as a place where food is prepared and sold for immediate consumption either on the premises or elsewhere.

(1)

The term includes, but is not limited to, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters, sandwich stands, and concession stands at race tracks, sports and meeting facilities, arenas, or stadiums and includes a space or area within a hotel, motel, bed and breakfast, boarding house, hospital, grocery store, convenience store, supermarket, or office building where food is obtained or consumed if a separate charge is made for the 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)

Push carts, lunch wagons, ice cream trucks, or other mobile facilities from which food ready for consumption is sold;

(vi)

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

(vii)

Any business offering food free of charge. The term "free of charge" means without any consideration, donation, contributions, or monetary charges of any nature paid for access to the food and, without limitation, requires the absence of any admission charge, cover charge, table reservation fee, gate charges, seat charges, entertainment fee, green fees, or required minimum purchase of food or merchandise.

(viii)

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.

Taxpayer shall mean any person engaged in the business of a restaurant or drinking place who is required to pay the tax herein imposed.

• **Sec. 10-1701. - Intent and purpose of article.**

(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 R.R.S. § 16-205, the city council finds, determines, and declares that restaurant and drinking place businesses 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 raising revenue to support and further general city activities and services. 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 article should be excluded from its scope because (i) the activity is offered without charge, (ii) the activity has a primary purpose other than to generate revenue for the business by the sale of food or drink, (iii) 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, (iv) the sale of food or drink is primarily intended to encourage and support the civic, charitable, educational, or religious activities of a nonprofit corporation, and/or (v) the sale of food or drink is by a nonprofit corporation contracting with the City of Ralston and assessing a tax measured by those sales has the contradictory effect of reducing revenue paid to the city as compensation for the contract.

(d)

The city council further determines that the tax will generate annual revenue of less than seven hundred thousand dollars (\$700,000.00). In the event the occupation tax generates seven hundred thousand dollars prior to the end of the fiscal year, the tax shall be suspended for the remainder of the fiscal year.

• **Sec. 10-1702. - Tax imposed.**

(a)

On or after November 1, 2015, and in each calendar month thereafter, there is hereby imposed an occupational privilege tax upon each and every person conducting business as a restaurant or drinking place within the city for any period of time during a calendar month. The amount of the tax shall be 2.5 percent of all gross receipts for each calendar month derived from the sale of food or beverages subject to this tax.

(b)

The person engaged in the taxable business may itemize the tax levied on a bill, receipt, or other invoice provided to the purchaser but each person engaged in the restaurant or drinking place business shall remain liable for the tax imposed by this section.

• **Sec. 10-1703. - Tax imposed for revenue purposes; tax cumulative.**

(a)

The tax imposed by this article is for revenue purposes to support the government of the city. 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 and 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 it from the 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/she may carry on, unless otherwise provided therein. It is intended that the occupation tax imposed by this article shall be cumulative except where otherwise specifically provided.

- **Sec. 10-1704. - Return and administration fee.**

(a)

Each and every person engaged in a restaurant or drinking place business within the city for any period of time shall prepare and file with the Treasurer a return for the taxable calendar month and at the same time pay to the Treasurer the tax herein imposed. The return shall be on a form prescribed by the Treasurer and shall be filed on or before the last day of the month following receipt of any amount subject to this tax.

(b)

The Treasurer may adopt and promulgate regulations allowing for quarterly reports and payments in lieu of monthly reports and payments, taking into consideration the amount of tax due and the nature of the business conducted. In addition, a person subject to the tax imposed herein may, upon written application to and with the written consent of the Treasurer, make reports and remittances on a quarterly basis in lieu of monthly. Such quarterly reports shall be due on the 15th day of April, July, October, and January of each year and shall report the gross receipts and the amount due for the immediately preceding three calendar months.

(c)

As reimbursement for the cost of collecting the tax, a taxpayer may deduct and withhold from the taxes otherwise due and paid two percent of the amount paid to the Treasurer.

- **Sec. 10-1705. - Suspension or revocation of other licenses.**

No delinquency in payment of the tax herein provided for by this article and no conviction for violation of this article may be grounds for the suspension or revocation of any other license issued to any person engaged in business within the city under any licensing provisions of this code or other ordinances, nor may the same be grounds for the suspension or revocation of any license issued by any licensing authority pursuant to the statutes enacted by the general assembly of Nebraska.

- **Sec. 10-1706. - Failure to file return; delinquency; assessment by Treasurer.**

(a)

If any person neglects or refuses to make a return or payment of the taxes as required by this article, the Treasurer shall make an estimate, based upon such information as may be reasonably available, of the amount of the 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

thereof, together with interest on such delinquent taxes at the rate of one percent per month, or fraction thereof, from the date when due.

(b)

The Treasurer shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest.

(c)

Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Treasurer ten days from the date of service of the notice; however, within such ten-day period the delinquent taxpayer may petition the Treasurer for a revision or modification of such assessment and shall, within such ten-day period, furnish the Treasurer the facts and correct figures showing the correct amount of such taxes. Such petition and the facts and figures submitted shall be submitted in writing and shall be given under oath of the taxpayer.

(d)

The Treasurer may modify such assessment in accordance with the facts which he/she deems correct. Such adjusted assessment shall be made in writing and notice given to the taxpayer. All such decisions shall become final upon the expiration of 30 days from the date of service unless proceedings are commenced within that time for appeal in the district court of Douglas County, Nebraska, as may be provided by law.

- **Sec. 10-1707. - Jeopardy assessment.**

(a)

If the Treasurer finds that collection of the tax will be jeopardized by delay, in his/her discretion, he/she may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the Treasurer may proceed to collect such tax as hereinafter provided.

(b)

Collection may be stayed if the taxpayer gives such security for payment as shall be reasonably satisfactory to the Treasurer.

- **Sec. 10-1708. - Administration of article; miscellaneous provisions.**

(a)

Administration by Treasurer. The administration of the provisions of this article is hereby vested in the Treasurer, who shall prescribe forms and reasonable rules and regulations 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. Duties of the Treasurer may be performed by any qualified deputy or other person designated by the Treasurer.

(b)

Notices. It shall be sufficient for the purpose of this article that any notices required to be given to the taxpayer be in writing and personally delivered or mailed to the taxpayer's last-known address.

(c)

Duty to keep books and records. It shall be the duty of every taxpayer to keep and preserve suitable records and other such 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 three years all such books, invoices and other records, which shall be open for examination at any time by the Treasurer or his/her duly authorized agents. If such person keeps or maintains his/her books, invoices, accounts and other records, or any thereof, outside of the state, upon demand by the Treasurer he/she shall make the same available at a suitable place within the state, to be designated by the Treasurer, for examination, inspection and audit by the Treasurer or his/her duly authorized agents.

(3)

The Treasurer, in his/her discretion, may make, permit or cause to be made the examination, inspection or audit of books, invoices, accounts and 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 will 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)

Investigation of taxpayer's books. 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 Treasurer, or his/her duly authorized deputies, may hold investigations and hearings concerning any matters covered by this article; and may examine any relevant books, papers, records or memoranda of any such person; and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge

thereof; and may take testimony and require proof for his/her information. The Treasurer and his/her duly authorized deputies shall have power to administer oaths to such persons.

(e)

Sale of business. Whenever any taxpayer sells his/her restaurant or drinking place business or quits engaging in a restaurant or drinking place business, any tax payable under this article shall become immediately due and payable and the taxpayer shall immediately make a report and pay the tax due.

(f)

Status of unpaid tax in bankruptcy and receivership. Whenever the business or property of any taxpayer subject to this article is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this article and for which the taxpayer is in any way liable under the terms of this article shall be a prior and preferred lien against all the property of the taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as hereinafter provided on the property of the taxpayer, other than the goods, stock-in-trade, and business fixtures of such taxpayer; and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this article under process or order of any court without first ascertaining from the Treasurer the amount of any taxes due and payable under this article; and, if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of such taxes out of the proceeds of such sale before making payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as above provided.

(g)

Release of liens. The tax imposed by this article, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien, except as otherwise provided by constitution or statute, superior to all other liens, on all the merchandise, furniture and fixtures, tools and equipment of the taxpayer within the city, and may be foreclosed by seizing under distraint and sale of so much of said merchandise, furniture and fixtures, tools and equipment as may be necessary to discharge the lien. The lien created by this article shall apply only to tax obligations hereafter incurred. Any lien for taxes as shown on the records of the county clerks and recorders as herein provided shall, upon the payment of all taxes, penalties and interest covered thereby, be released by the Treasurer in the same manner as mortgages or judgments are released.

(h)

Statute of limitations. Any suit for collection of any taxes imposed by this article or for any interest thereon or penalties with respect thereto shall be instituted, or any other action to collect the same shall be commenced, or any notice of lien shall be filed in accordance with Nebraska law. The taxpayer and the Treasurer may agree in writing to an extension of any limitation and the period so agreed on may be extended by subsequent agreements in writing.

- **Sec. 10-1709. - Recovery of unpaid tax by action at law.**

(a)

The Treasurer may treat any 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 Treasurer may recover at law the amount of such taxes, penalties and interest in any court as permitted by law.

(c)

The return of the taxpayer or the assessment made by the Treasurer, as herein provided, shall be prima facie proof of the amount due.

(d)

Such actions may be actions in attachments, and writs of attachment may be issued to the constable or sheriff, as the case may be; and in any such proceeding no bond shall be required of the Treasurer except as may be required by statute, nor shall any constable or sheriff require of the Treasurer an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and, in accordance with the procedure established by statute, if any, the Treasurer may prosecute appeals or writs of error in such cases without the necessity of providing bond therefor.

(e)

It shall be the duty of the city attorney, when requested by the Treasurer, to commence 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.

- **Sec. 10-1710. - City a party to title actions for determination of lien.**

In any action affecting the title, ownership, or rights to real estate or to personal property against which a lien for collection of the taxes imposed herein has attached, the city may be made a party defendant for the purpose of obtaining a judgment or determination of its lien upon the property involved therein.

- **Sec. 10-1711. - Authority of Treasurer to waive penalty.**

The Treasurer is hereby authorized to waive, for good cause shown, any penalty assessed in this article. Any interest imposed in excess of six percent per annum shall be deemed a penalty.

- **Sec. 10-1712. - Penalties.**

(a)

Penalty for deficiencies caused by disregard of rules. If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency; and in such case interest shall be collected at the rate of one percent per month, or fraction thereof, on the amount of the deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable within ten days after written notice and demand by the Treasurer.

(b)

Penalties for deficiency caused by fraud. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added 50 percent of the total amount of the deficiency, and in such case the whole amount of the tax that is unpaid, including the additions, shall become due and payable ten days after written notice and demand by the Treasurer, and an additional one percent per month, or fraction thereof, on said amounts shall be added from the date the return was due until paid.

- **Sec. 10-1713. - Severability.**

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

- **Sec. 10-1714. – Periodic Review; Sunset.**

The occupation tax imposed by this article shall be placed on the agenda of the City Council on the first regular meeting of the Council in October, 2019 for the purpose of reviewing the benefits and detriments of the occupation tax and determining whether said tax should remain in effect. Council will be provided information showing the revenue generated by the tax in each of the previous four years, a roll of the restaurants and drinking establishments subject to the tax for each year and such other information as the Council deems relevant. The Council will hold a public hearing to receive input from those desiring to be heard. At the close of the public hearing, the Mayor shall entertain a motion to repeal the occupation tax and cease its collection. If such motion is not made or dies for lack of a second or fails to pass by a majority vote of the council, the occupation tax shall not be repealed and shall continue in full force and effect. If the motion is made, seconded and approved by a majority of the Council, then the occupation tax will sunset and the City will cease its collection of the tax. The above described review shall take place on the first regular meeting of the Council in October at four year intervals for so long as the occupation tax is in effect. In the event the review does not take place in a timely manner, the occupation tax shall remain in full force and effect until such time as the review takes place.

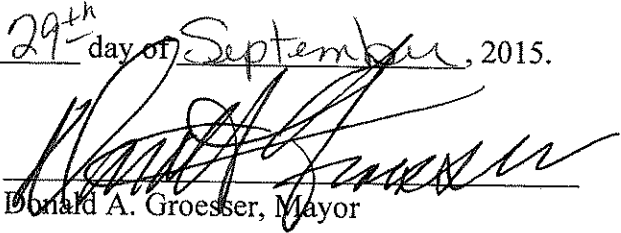
II.

Repealer. Any and all Ordinances or portions thereof, which are in conflict herewith, are hereby repealed.

III.

Effective Date. This Ordinance shall take effect and be in full force from and after its passage, approval and publication in accordance with law. Publication shall be in pamphlet form.

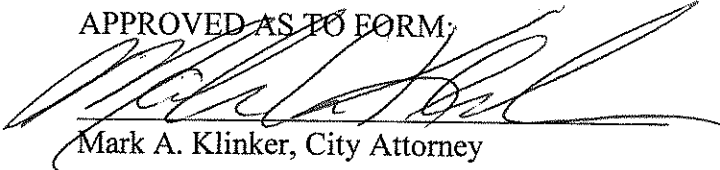
ADOPTED by the Mayor and City Council this 29th day of September, 2015.


Donald A. Groesser, Mayor

ATTEST:


Dolores L. Costanzo, City Clerk

APPROVED AS TO FORM:


Mark A. Klinker, City Attorney