Chapter 3.30

RESTAURANT OCCUPATION TAX

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3.30.010 Purpose.

Pursuant to the authority of Nebraska Revised Statute R.R.S. 1943, Section 15-203, the City Council finds, determines and declares that it is appropriate that a tax be imposed on all 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. (Ord. 19409 §1; July 12, 2010).

3.30.020 Definitions.

As used in this chapter, 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 beverages, alcoholic or non-alcoholic. Such businesses include, but are not limited to, bars, taverns, night clubs, dance halls, restaurants, race tracks, and arenas.

(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 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, and receipts from the sale of food and beverages as a
concession at a race track or arena. Restaurant includes, but is not limited to, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters, sandwich stands, temporary stands, grocery stores, convenience stores, and supermarkets. 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.

(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. 19481 §5; December 13, 2010: prior Ord. 19409 §2; July 12, 2010).

### 3.30.030 Tax Imposed; Collection of Tax.

(a) Beginning January 1, 2011 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 business within the City for any period of time during a calendar month. The amount of such tax shall be two percent (2%) of all gross receipts for each calendar month derived from the drinking places and restaurant businesses 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 Section 3.16.010 of the Lincoln Municipal Code.

(b) The person engaged in operating a drinking place or restaurant business 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 chapter. (Ord. 19481 §6; December 13, 2010: prior Ord. 19409 §3; July 12, 2010).

### 3.30.040 Return.

(a) Each and every person engaged in the business of operating a drinking place or restaurant business within the City for the calendar month beginning January 2011, and for each and every three-month period thereafter, shall prepare and file, on or before the 25th day of April, July, October, and January of each year on a form prescribed and furnished by the City Finance Director, 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 City Finance Director, postage prepaid and postmarked before midnight of the 25th of the appropriate month.

(b) The City Finance Director may, by regulation, specify that taxpayers may make reports and remittances monthly in lieu of quarterly. Such monthly reports shall be due on the 25th day of each month and shall report the gross receipts and the amount due for such month immediately preceding the month in which the reports and remittances are required. Whenever a taxpayer makes reports and remittances monthly, such taxpayer shall be allowed an occupation tax credit of two percent (2%) of the amount due. (Ord. 19481 §7; December 13, 2010: prior Ord. 19409 §4; July 12, 2010).
3.30.050 Tax Cumulative.

(a) The levy of the tax under this chapter 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 chapter 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 chapter shall be cumulative except where otherwise specifically provided. (Ord. 19409 §5; July 12, 2010).

3.30.060 Use of Revenue.

The two percent (2%) occupation tax imposed by this chapter, less any administrative expenses, shall be used to fund any expenditures that the Joint Public Agency, created to manage and operate the City arena, is lawfully authorized to make. (Ord. 19409 §6; July 12, 2010).

3.30.070 Failure to File Return; Delinquency; Assessment by City Finance Director.

(a) If any person neglects or refuses to file a return or make payment of the taxes as required by this chapter, the City 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 (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. Any such interest due may be compounded quarterly.

(b) The City 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.

(c) Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the City Finance Director 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 City Finance Director for a revision or modification of such assessment and shall, within such ten-day period, furnish the City Finance Director 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) The City Finance Director 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. 19481 §8; December 13, 2010: prior Ord. 19409 §7; July 12, 2010).

3.30.080 Administration of Chapter; Miscellaneous Provisions.

(a) The administration of the provisions of this chapter are hereby vested in the City Finance Director, or his designee, who shall prescribe forms in conformity with this chapter 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 chapter 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 City Finance Director or his or 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 City Finance Director he/she shall make the same available at a suitable place within the City, to be designated by the City Finance Director, for examination, inspection and audit by the City Finance Director or his or her duly authorized persons. The taxpayer shall reimburse the City for the reasonable costs of the examination, inspection and audit if the City Finance Director determines that the taxpayer paid ninety percent or less of the tax owing for the period of the examination.

(3) The City Finance Director, in his or 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 City Finance Director or his or her duly authorized persons, may conduct investigations concerning any matters covered by this chapter; and may examine any relevant books, papers, records or memoranda of any such person. (Ord. 19409 §8; July 12, 2010).


(a) The City Finance Director 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 Lancaster 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 City Finance Director, 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 chapter and this remedy shall be in addition to all other existing remedies, or remedies provided in this chapter. (Ord. 19409 §9; July 12, 2010).
3.30.100 Suspension or Revocation of Licenses for Failure to Pay Tax; Hearing.

If the Mayor or the Mayor’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 chapter, 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. 19409 §10; July 12, 2010).

3.30.110 Sunset Provision.

The occupation tax imposed by this chapter shall terminate and collection of the tax shall cease no later than January 1, 2046. (Ord. 19409 §11; July 12, 2010).