

ORDINANCE NO. 5604

An ordinance to amend of the City of Fremont, Nebraska, amending Chapter 14 of the Fremont Municipal Code, Ordinance No. 3139, implementing an occupation tax on food and beverages; adding Section 14-301 through Section 14-314 pertaining to food services, drinking places and restaurant tax; defining rates and payment procedures; and repealing any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

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

SECTION I. Findings and Intent:

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.

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.

It is the intent of this Council that the occupational taxes imposed by this ordinance shall be cumulative except where otherwise specifically provided.

Section 2. Chapter 14, Section 14-301 to 14-314 are added to the Municipal Code of Fremont, Nebraska, Ordinance No. 3139, as follows:

§14-301 Definitions

- (A) City shall mean the City of Fremont and the area within the corporate limits of the City of Fremont.
- (B) Drinking places shall mean any establishment offering the public on premises consumption of food and/or non-alcoholic beverages. Such businesses include, but are not limited to, bars, taverns, night clubs, dance halls, restaurants, race tracks, and arenas. The term shall not include:
 - (i) any business offering food or 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 a facility or its services 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, refreshments, or merchandise.
 - (ii) any state or county fair.
- (C) Finance Director shall mean the Finance Director of the City of Fremont.

- (D) Food shall include all edible refreshment or nourishment, whether solid, semi-solid, liquid or otherwise, except 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 other items of essentially the same nature and consumed for essentially the same purpose which are packaged for home consumption.
- (E) Person shall mean any natural person, individual, partnership, association, organization or corporation of any kind or character engaging in the business of providing food services, drinking places, or restaurants.
- (F) 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 on the premises. The term includes, but is not limited to, cafes, grills, bistros, delicatessens, coffee shops, bakeries, lunch counters, and sandwich stands. The term includes a space or area within a hotel, motel, bed and breakfast, boarding house, hospital, or office building where food is sold or consumed if a separate charge is made for such food. The term does not include:
- (i) A grocery store, convenience store, supermarket, or a hotel, motel, or other place offering lodging, except for any space or area therein designated as a place where the public may consume food.
 - (ii) A religious, civic, educational, charitable, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code that offers food solely to its members or students.
 - (iii) A daycare center, public or private, that offers food solely to its employees or the children staying at the center.
 - (iv) A convalescent home, nursing home, home for the aged or infirmed, or substance abuse facility that offers food solely to its residents.
 - (v) Premises where food is obtained solely from vending machines operated by coin or card operation regardless of whether the food may be consumed on the premises.
 - (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.
- (H) Taxpayer shall mean any person engaged in the food services and drinking places businesses herein defined who is required to pay the tax herein imposed.

§14-302 Collection

- (A) There is hereby imposed a food services and drinking places occupational privilege tax upon each and every person conducting food services, drinking places business, or restaurants within the City for any period of time during a calendar month. The amount of such tax shall be one percent (1.00%) of all gross receipts for each and every calendar month derived from the food services and drinking places business subject to this tax.

- (B) The person engaged in the food services, drinking places business, and/or restaurants may itemize the tax levied on a bill, receipt, or other invoice to the purchaser, but each person engaged in food services, drinking places business, or restaurant 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 nonalcoholic beverages. Gross receipts subject to tax shall also include the receipts of sale of food in a restaurant with facilities for consumption on the premises even if the food is 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 non-alcoholic beverages as a concession at a race track or arena.

§14-303 Tax Imposed for Revenue Purposes; Tax Cumulative

- (A) The tax imposed by this article is purely 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, 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 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.

§14-304 Exemptions

- (A) The tax imposed by this article shall not be due on:
 - (a) Any fee received exclusively by a religious, civic, educational, charitable, governmental, or political organization exempt from income taxes under the United States Internal Revenue Code.
 - (b) Any fee received for any scientific and literary lectures or entertainment as described in Nebraska Revised Statutes Section 16-205.
 - (c) Any fee received for concerts and all other musical entertainments given exclusively by the citizens of the City as defined in Nebraska Revised Statutes Section 16-205.
 - (d) Any fee received by any person engaged in business within the City not within the taxing power of the City under the Constitution of the United States and the Constitution and Statutes of the State of Nebraska.
 - (e) The value of food or beverages furnished by food services and drinking places to employees as part of their compensation when no charge is made to the employee.
 - (f) Tips to an employee of a food services and drinking places 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 sole 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 the mandatory amount does not exceed twenty percent (20%) of the sales price.

§14-305 Due date and Return

(A) Each and every person engaged in the food services, drinking places business and/or restaurants within the City for the calendar month beginning October 1, 2015, and for each and every calendar month thereafter, shall prepare and file, on or before the last day of the month following on a form prescribed by the Finance Director, a return for the taxable calendar month, and at the same time pay to the Finance Director the tax herein imposed.

(B) The City Finance Director may, by regulation, specify a uniform class of taxpayer that may make reports and remittances quarterly in lieu of monthly taking into consideration the amount of tax due. In addition, a person subject to the tax imposed herein may, upon written application to and with the written consent of the Finance Director, make reports and remittances on a quarterly basis in lieu of monthly. Such quarterly reports shall be due on the 15th day of July and October of each year and shall report the January, April gross receipts and the amount due for the three (3) months immediately preceding the months in which the reports and remittances are required.

§14-306 Suspension or Revocation of Other Licenses

(A) No delinquency in payment of the tax herein provided for by this article and no revocation or conviction for violation of this article shall be grounds for the suspension or revocation of any other license issued to any person engaged in business within the City by the Finance Director or any other official of the City under any licensing provisions of this Code or other ordinances, nor shall the same be grounds for the suspension or revocation of any other license issued by any licensing authority pursuant to the statutes enacted by the State of Nebraska.

§14-307 Failure to File Return; Delinquency; Assessment by Finance Director

(A) 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 on such delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the date when due.

(B) 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.

(C) 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 or 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 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) Thereupon, the Finance Director shall 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 of Dodge 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.

§14-308 Jeopardy Assessment

(A) If the Finance Director finds that the collection of the tax will be jeopardized by delay, in his or her discretion, he or 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 Finance Director 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 Finance Director.

§14-309 Administration of Article; Miscellaneous Provisions

(A) Administration by Finance Director. The administration of the provisions of this article are hereby vested in the Finance Director, who shall prescribe forms 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.

(B) Duties performed by others. Duties of the Finance Director herein provided may be performed by any qualified person designated by the Finance Director.

(C) Notices to be sent by registered or certified mail. All notices required to be given to the taxpayer under the provisions of this article shall be in writing, and if mailed postpaid by registered or certified mail, return receipt requested, to him or her at his or her last known address shall be sufficient for the purposes of this article.

(D) Duty to keep books and records. 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.

(i) 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.

(ii) It shall be the duty of every such taxpayer to keep and preserve for a period of three (3) 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. If such person keeps or maintains his books, invoices, accounts or other records, or any thereof, outside of the state, upon demand of the Finance Director he/she 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.

(iii) The 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.

(E) 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 Finance Director or his or her duly authorized persons, 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 of his or her information. The Finance Director and his or her duly authorized persons shall have power to administer oath to such persons.

(F) Sale of business. Whenever any taxpayer sells his/her food services, drinking places business, or restaurant or quits engaging in such business, any tax payable under this article shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

(G) Status of unpaid tax and bankruptcy and receivership. Whenever the business or property of any taxpayer subject to this article shall be 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 the property of the taxpayer, except as to pre-existing 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 official shall sell the property of any person subject to this article under process or order of any court without first ascertaining from the Finance Director 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 monies to any judgment creditor or other claimants of whatsoever kind or nature, except the cost of the proceedings and other pre-existing claims or liens as above provided.

(H) Release of liens. The tax imposed by this article, together with the interest and penalties herein provided and the cost of collection which may be incurred, shall be and, until paid, remain a first and prior lien, except as otherwise provided by the 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 Finance Director in the same manner as mortgages or judgments are released.

(I) Statute of Limitations. No suit for collection of any taxes imposed by this article for any interest thereon or penalties with respect thereto may be instituted, or any other action to collect the same shall be commenced, nor shall any notice of lien be filed, or distraint warrant be issued,

more than three (3) years after the date on which the tax was or is payable. In case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the Finance Director may agree in writing to an extension thereof; and the period so agreed on may be extended by subsequent agreement in writing.

§14-310 Recovery of Unpaid Tax by Action at Law

(A) The 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 Finance Director may recover at law the amount of such taxes, penalties and interest in any court of Dodge 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 Finance Director, as herein provided, shall be prima facie proof of the amount due.

(D) Such actions may be actions and 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 Finance Director except as may be required by statute, nor shall any constable or sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceeding; and, in accordance with the procedure established by statute, if any, the Finance Director may prosecute appeals or writs of error in such cases without the necessity of providing bond therefore;

(E) The City Attorney, when requested by the Finance Director, with the consent of the Mayor, may commence an 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.

§14-311 City a Party to Title Actions for Determination of Lien

In any action affecting the title to real estate or the ownership or rights to possession of personal property, 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.

§14-312 Authority of Finance Director to Waive Penalty

The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed as in this article provided; and any interest imposed in excess of six percent (6%) per annum shall be deemed a penalty.

§14-313 Penalty

(A) Penalties 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 (10%) of the total amount of the deficiency; and in such case interest shall be collected at the rate of one percent (1%) 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 in addition shall become due and payable within ten (10) days after written notice and demand by the Finance Director.

(B) Penalties for deficiencies 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 fifty percent (50%) 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 (10) days after written notice and demand by the Finance Director, and an additional one percent (1%) per month, or fraction thereof, on said amounts shall be added from the date the return was due until paid.

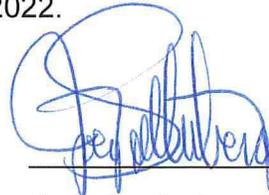
§ 14-314 Severability

If any provisions, 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.

SECTION 3. Any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 4. This ordinance shall be in force from and after its passage, approval and publication as required by law and take effect April 1, 2022.

PASSED THIS 25th DAY OF January, 2022.



Joey Spellerberg, Mayor

Attest:



Tyler Ficken, City Clerk

