

ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

ORDINANCE NO. 1365

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA LEVYING AND IMPOSING RESTAURANTS AND DRINKING PLACES OCCUPATION TAX AS SECTION 113.10 OF THE LA VISTA MUNICIPAL CODE; SPECIFYING ADMINISTRATIVE PROVISIONS AND USE OF TAX PROCEEDS; REPEALING CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, as follows:

Section 1. The Mayor and City Council of the City of La Vista desire to levy and impose a new Restaurants and Drinking Places Occupation Tax as Section 113.10 of the La Vista Municipal Code as provided in this Ordinance.

Section 2. Section 113.10 of the La Vista Municipal Code is hereby adopted and approved as follows:

“§ 113.10 RESTAURANTS AND DRINKING PLACES OCCUPATION TAX

§ 113.10.0. - DEFINITIONS. As used in this section, the following words and phrases shall have the meanings ascribed to them in this subsection, except where the context clearly indicates or requires a different meaning:

Applicable Rate shall mean the rate of tax from time to time specified in the master fee ordinance for the tax imposed by this Section 113.10. The initial tax rate of one and one half percent (1.5%) and any subsequent rate as adjusted shall satisfy any applicable requirements of Neb. Rev. Stat. Section 18-1208, including without limitation, that the initial rate or any increased rate or other rate adjustment shall be projected to generate annual occupation tax revenues that are not in excess of the applicable amount listed in Neb. Rev. Stat. Section 18-1208(2), unless approved by registered voters at an election held within the City or otherwise permitted by Nebraska Statutes.

Beverage shall mean any drinkable liquid for humans for hydration, nutrition, taste, pleasure or similar purposes, including without limitation, any such liquid that is frozen, alcoholic or nonalcoholic.

City shall mean the City of La Vista and the area within the corporate limits of the City of La Vista, as adjusted from time to time.

City Clerk shall mean the City of La Vista City Clerk or any designee of the City Clerk.

City Administrator shall mean the City of La Vista City Administrator or any designee of the City Administrator.

Drinking place shall mean any establishment or business offering on-premises consumption of alcoholic and/or nonalcoholic beverages including, but not limited to, bars, taverns, coffee shops, night clubs, dance halls, concession or other types of stands, drive-through, take out, and “to go” facilities, and establishments, facilities, or spaces or areas at or within race tracks, golf courses, sports facilities, meeting or event facilities, arenas, stadiums, hotels, motels, bed and breakfasts, boarding houses, hospitals, grocery stores, shopping centers, convenience stores, supermarkets, or office buildings where beverages are obtained or consumed if a charge is made for them. The term includes all types of facilities, locations and delivery methods by, from or through which a drinking place from time to time might be conducted, including without limitation any permanent, temporary, fixed, mobile, contracted, third party, stand-alone, collocated, joint, or bundled facilities, locations, or delivery methods. Without limiting the foregoing, the term includes caterers, stands and mobile vendors, push carts, beverage wagons or trucks, and other temporary or mobile facilities from which beverages ready for consumption are provided. Also included are places consisting solely of drive-through facilities. A drinking place may also be a restaurant.

(1) The term does not include any establishment or 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

ORDINANCE RECORD

No. 728—REFFIELD & COMPANY INC., OMAHA

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, food, 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, except as to use of such place or premises by a person that is not exempt from income taxes under the United States Internal Revenue Code to offer beverages to the public.

Effective Date shall mean October 1, 2019.

Engaged in shall mean to conduct, offer to the public, carry on, or take part in the operation of an enterprise or activity as owner, operator, or agent. Not in limitation of foregoing parts of this definition, a person renting or using a facility, place or premises for a taxable enterprise or activity or service, as a promoter, producer, one-time event, full-time, or otherwise, shall be considered to be engaged in the enterprise or activity.

Food shall mean all edible substances, whether solid, semi-solid, liquid, concentrated, frozen, dried, dehydrated, or otherwise, for ingestion, chewing, or consumption by humans for nutrition, taste, refreshment, pleasure or similar purposes.

Gross receipts shall mean the total amount of receipts, revenues, consideration, donations, contributions, or monetary charges of any nature received for or to provide 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 payor a right to access or obtain food or beverage which is otherwise subject to this tax;
- (iii) The amount received by a person from vendors or contractors who provide food or beverages to that person's customers on or off the premises and which are within the scope of this tax; and
- (iv) Receipts from the sale of beverages or food of a restaurant or drinking place for immediate consumption even if it is not actually consumed on the premises, including without limitation the receipts from prepared "take out," "drive-through," or "to go" food or beverages, or food or beverages provided through a food or beverage delivery platform or other kind of food or beverage delivery service.

(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 employees.
- (ii) Tips to an employee of a restaurant or drinking place 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, regardless whether or not the tip is paid to the employee or added to the bill.
- (iii) Payments received by a caterer from 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;
- (iv) Receipts from sales of food or beverage exempt or otherwise not subject to Nebraska sales and use taxes imposed by the Nebraska Revenue Act of 1967, as amended from time to time; or

ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

(v) Receipts from sales of snack foods or beverages, meaning unopened bottles, cans or packages of soft drinks, alcoholic beverages, sports drinks, flavored drinks, bottled water, chewing gum, candy, popcorn, pretzels, nuts, cookies, donuts, crackers, chips, or other items of essentially the same nature, prepackaged in sealed containers and sold for home consumption, except when provided in connection with any prepared food or beverages with respect to which receipts from the snack foods or beverages, together with the prepared food or beverages, are subject to Nebraska sales and use taxes pursuant to the Nebraska Revenue Act of 1967.

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

Rate Review Date shall mean the date that is two years after the Effective Date, and every two years thereafter or any other date that the City Council or City Administrator determines necessary or advisable in connection with setting or reviewing a rate or adjusted rate for the tax pursuant to this section in accordance with applicable law.

Rate Review Period shall mean the applicable period ending the day before a Rate Review Date that is used for purposes of reviewing the Applicable Rate.

Restaurant shall mean any place that is kept, used, maintained, advertised, or held out 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, concession or other types of stands, drive-through, take out, and "to go" facilities, and establishments, facilities, spaces or areas at or within race tracks, golf courses, sports facilities, meeting or event facilities, arenas, stadiums, hotels, motels, bed and breakfasts, boarding houses, hospitals, grocery stores, shopping centers, convenience stores, supermarkets, or office buildings where food is obtained or consumed if a separate charge is made for the food. A restaurant may also be a drinking place. The term includes all types of facilities, locations and delivery methods by, from or through which a restaurant from time to time might be conducted, including without limitation any permanent, temporary, fixed, mobile, contracted, third-party, stand-alone, collocated, joint, or bundled facilities, locations, or delivery methods. Without limiting the foregoing, the term includes caterers, stands and mobile food vendors, push carts, lunch or food wagons or trucks, ice cream trucks, and other temporary or mobile facilities from which food ready for consumption is sold. Also included are places consisting solely of drive-through facilities.

(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) Temporary stands at annual festivals or 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;

(vi) Any establishment or 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

ORDINANCE RECORD

No. 728—REFFIELD & COMPANY INC., OMAHA

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, beverages, or merchandise; or

(vii) 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, except as to use of such place or premises by a person that is not exempt from income taxes under the United States Internal Revenue Code to offer food to the public.

Provided, however, with the exception of subsection (iv), any such place, center, home, facility, premises, establishment, or business described in this subsection "2" shall constitute a restaurant subject to the occupation tax with respect to any receipts from food sales that are subject to Nebraska sales and use taxes pursuant to the Nebraska Revenue Act of 1967.

Retail Sale shall mean sale for use or consumption and not for resale.

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

§ 113.10.1. – FINDINGS, INTENT AND PURPOSE OF SECTION.

(a) The City Council finds, determines, and declares that persons engaging in restaurants and drinking places are benefited from tourism, leisure, and recreational activities that place unique demands on the City's resources, but which are activities that should be promoted and encouraged. Further, residents and nonresidents who patronize restaurants and drinking places are enjoying a discretionary activity that is dependent upon, and generating revenue from, the restaurant's or drinking place's location within the City and its access to services provided by the City. Subjecting restaurants and drinking places to taxation for purposes of raising revenues is fair, reasonable, appropriate, and just.

(b) Pursuant to the authority of Neb. Rev. Stat. § 16-205, the City Council finds, determines, and declares that restaurants and drinking places form discrete and reasonable classifications of businesses, users of space, or kinds of transactions engaged in within the City and it is appropriate that an occupation tax be imposed on such classifications of businesses, users of space, or kinds of transactions for the purpose of raising revenue to support and further City activities, services, and purposes. These findings, determinations, and declarations are made with due recognition of such businesses, users of space, and transactions within the City and the relation of such businesses, users of space, and transactions to the municipal welfare and the expenditures required of the City, and with consideration of just, proper and equitable distribution of tax burdens within the City as the City Council in its sole discretion determines appropriate, and other proper considerations.

(c) The City Council further determines that some activity or revenue should be excluded from the scope of this section, for reasons including without limitation (i) the activity is offered without charge, (ii) the activity has a primary purpose other than to generate revenue for the business or establishment by the sale of food or drink, (iii) 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 determining the amount of taxation, (iv) the sale of food or beverages 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 La Vista and assessing a tax measured by those sales potentially has the contradictory effect of reducing revenue paid to the City as compensation for the contract.

(d) The restaurants and drinking places occupation tax pursuant to this Section 113.10 is specifically imposed for general revenue purposes and proceeds of the tax shall be deposited in the general fund of the City, except as may otherwise be approved by the City Council from time to time to use or pledge such proceeds for

ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

one or more specific projects of the City and deposit such proceeds in a special fund rather than the City's general fund.

(e) The Mayor and City Council find and determine based on analysis supplied by the City Administrator ("Analysis") that annual revenues generated by the tax at the initial Applicable Rate during the initial period ending on the first Rate Review Date are not projected to exceed \$700,000.00. The Mayor and City Council hereby ratify, affirm, adopt, and approve the Analysis.

§ 113.10.2. – TAX LEVIED AND IMPOSED.

(a) On and after the Effective Date, and in each calendar month thereafter, there is hereby levied and imposed a restaurant and drinking place occupation tax upon each and every person conducting, engaging in, or operating a restaurant or drinking place within the City at any time during a calendar month. The tax shall begin on the Effective Date at 4:00 a.m. The amount of the tax shall be the Applicable Rate of all gross receipts for each calendar month derived from the retail sale of food or beverages of restaurants and drinking places subject to this tax. It shall be unlawful for any person engaging in a restaurant or drinking place to fail to pay the tax required by this section, or to fail to file any return or information required by this section. Each day any such person engages in a restaurant or drinking place after failing to pay the required tax, or failing to file any required return or information, shall constitute a separate offense and shall be punishable as provided in section 10.99 of this Code, in addition to any other remedy provided in this chapter; provided, however, delinquency in payment of the tax required by this section, or conviction for violation of this section, shall not be grounds for suspension or revocation of any other license issued to any person within the City under any licensing provision of this code or other ordinances, or of any license issued by any licensing authority pursuant to Nebraska Statutes.

(b) The City Administrator within an administratively practicable time after each Rate Review Date shall estimate projected annual revenues until the next Rate Review Date and make such recommendations as the City Administrator determines necessary or appropriate, including without limitation, any recommended adjustments to the Applicable Rate or Rate Review Date as determined necessary or appropriate to satisfy applicable Nebraska Statutes, including without limitation Neb. Rev. Stat. Section 18-1208. Such estimates, projections, and any recommended adjustments shall be based on actual revenues from the tax during the applicable Rate Review Period and such other information, factors, or considerations as the City Administrator determines appropriate. Any proposed adjustment to the Applicable Rate shall be presented as an amendment to the master fee ordinance for consideration at a City Council meeting. Any such adjustment, if approved, shall be effective beginning at 4:00 a.m. on the first day of the fiscal year beginning immediately after the adjustment is approved, or on such other date as specified by the City Council.

(c) The tax imposed by this section 113.10 is a tax on the taxpayer for the privilege of engaging in the particular occupations within the City. The person engaged in a restaurant or drinking place may elect to itemize the tax levied and pass the cost of the tax through to customers or purchasers on bills, receipts, or other invoices provided to such customers or purchasers but such itemization and pass-through of the cost of the tax shall not be required and each person engaged in the restaurant or drinking place shall remain liable for the tax imposed by this section.

(d) Notwithstanding anything in this subsection 113.10.2 to the contrary, the City Council at any time shall have the option to submit any proposed tax or tax rate increase described in this section 113.10 to registered voters of the City.

§ 113.10.3. – TAX IMPOSED FOR REVENUE PURPOSES; TAX CUMULATIVE.

(a) The tax imposed by this section is for revenue purposes to support the government of the City and its activities. The levy of the tax under this section is in addition to all other fees, taxes, excises, and licenses levied or imposed under any contract or any other provisions of this code or ordinances of the City from time to time, and in addition to any fee, tax, excise, or license imposed by the State or federal government.

ORDINANCE RECORD

No. 728—REFFIELD & COMPANY INC., OMAHA

(b) Not in limitation of immediately preceding subsection 113.10.3(a), payment of the tax imposed by this section 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 without limitation those imposed for any business or occupation carried on along with the restaurant or drinking place, unless otherwise provided therein. It is the intent of the Council that the occupation tax imposed by this section shall be cumulative unless otherwise expressly provided.

§ 113.10.4. – RETURN AND ADMINISTRATION ALLOWANCE.

(a) Each and every person engaged in a restaurant or drinking place within the City for any period of time on or after the Effective Date shall prepare and file with the City Administrator a return for each calendar month and at the same time pay to the City the tax herein imposed. The return shall be on and in such form and content and include such supporting data as may be prescribed by the City Administrator from time to time, and shall be verified and sworn to by an officer responsible for the restaurant or drinking place, and shall be filed with the City Administrator on or before the last day of the month immediately following receipt of any gross receipts included for purposes of calculating the tax. Returns and tax payments shall be filed and paid (i) hand delivery or by United States mail, properly addressed, postage prepaid and postmarked no later than the last day of the appropriate month, or (ii) by electronic filing and payment by Automated Clearing Housing or Credit Card no later than the last day of the appropriate month, and in accordance with such procedures as prescribed by the City Administrator from time to time.

(b) As reimbursement for any additional administrative costs and expenses connected with the tax, a taxpayer at the time of each tax payment may elect to deduct, withhold, and retain from such payment two percent (2%) of the amount that is otherwise due and payable to the City ("Administration Allowance"). Any payment that is made without reduction for the Administration Allowance shall be deemed an irrevocable election by the taxpayer to forego the Administration Allowance with respect to that payment.

§ 113.10.5. - EFFECTIVE DATE.

The occupation tax imposed by this section shall commence on the Effective Date and shall continue and remain in effect unless terminated by City ordinance. Provided, however, the tax shall be eligible for reconsideration every ten years as follows. The City Council shall vote on any motion of any City Council member at a Council meeting that is seconded directing the City Administrator to prepare a proposed Ordinance to terminate the tax. The motion must be made within the first ninety days of the fiscal year beginning immediately after the ten-year anniversary of such tax, or within the first ninety days of the fiscal year beginning immediately after any subsequent ten-year anniversary. If the motion is approved, the City Administrator shall prepare a proposed Ordinance for consideration of the City Council at a subsequent Council meeting held within an administratively practicable time. If a motion is not made, or if the motion or proposed Ordinance fails, the tax will continue in effect.

Section 3. Repeal of Conflicting Provisions. Any conflicting provision of any previously enacted ordinance is hereby repealed, effective at midnight on the day before the Effective Date.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 5. Publication and Effective Date of Ordinance. This Ordinance shall be published in full and shall be in force and take effect from and after its passage and approval as provided by law.

ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

PASSED AND APPROVED THIS 3RD DAY OF SEPTEMBER 2019.



CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

A handwritten signature in black ink that reads "Pamela A. Buethe".

Pamela A. Buethe, CMC
City Clerk