

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 20, 2019 AGENDA**

| Subject: | Type: | Submitted By: |
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| AMEND AND REPLACE SECTION 113.10 (FAILURE TO PAY) WITH SECTION 113.50 (ADMINISTRATION; REMEDIES) | RESOLUTION ◆ ORDINANCE RECEIVE/FILE | KEVIN L. POKORNY DIRECTOR OF ADMINISTRATIVE SERVICES |

SYNOPSIS

An ordinance has been prepared to amend, renumber, and replace in its entirety Sections 113.10 Failure to Pay of the La Vista Municipal Code with Section 113.50.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval.

BACKGROUND

This ordinance would amend, renumber and replace in its entirety Section 113.10 with Section 113.50 which would provide for Administrative remedies and provisions regarding municipal code involving occupation taxes. Section 113.10 only addressed failure to pay. New Section 113.50 would provide administrative duties, remedies and provisions for business' subject to all occupation taxes.

ORDINANCE NO.

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AMENDING AND RENUMBERING SECTION 113.10 OF THE LA VISTA MUNICIPAL CODE REGARDING OCCUPATION TAXES AS SECTION 113.50; 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. Section 113.10 of the La Vista Municipal Code is amended, renumbered, and replaced in its entirety with Section 113.50 as follows:

“§ 113.50 ADMINISTRATION; REMEDIES.

§ 113.50.1. - Administration of chapter; miscellaneous provisions.

(a) Administration. Except as otherwise expressly provided in this chapter or other provisions of the Code or ordinances, administration of provisions of this chapter is hereby vested in the City Administrator or any designee of the City Administrator (“City Administrator”), who shall be authorized to prescribe forms and rules and regulations in conformity with this chapter as the City Administrator determines necessary or appropriate for the making of returns or for the ascertainment, assessment, collection, administration, or enforcement of the taxes imposed under this chapter.

(b) Notices. Unless otherwise specified in this chapter, it shall be sufficient for the purpose of this chapter that any notices required to be given to a taxpayer be in writing and personally delivered to the taxpayer or provided to the taxpayer by registered or certified mail, postage prepaid, return receipt requested at the taxpayer's last-known address, or otherwise in accordance with applicable law.

(c) 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 any tax for which such taxpayer is liable under this chapter.

(1) Records of the gross revenues, receipts, or such other basis by which any tax is calculated or measured shall be kept separate and apart from other records in order to facilitate the examination of books and records as necessary for the collection of taxes pursuant to this chapter.

(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 Administrator. If such taxpayer keeps or maintains the taxpayer's books, invoices, accounts and other records, or any thereof, outside of the City, upon demand by the City Administrator the taxpayer shall make the same available at a suitable place within the City, to be designated by the City Administrator, for examination, inspection or audit by the City Administrator as the City Administrator from time to time determines. The taxpayer shall reimburse the City for the reasonable costs of the examination, inspection, or audit if the City Administrator determines that the taxpayer paid ninety percent (90%) or less of the tax owing for the period of the examination.

(3) The City Administrator, in the City Administrator's 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 taxpayer outside of the City at the place where same are kept or maintained or at any place outside the City where the same will be made available, provided such taxpayer 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 payment, or for the purpose of determining the amount of tax due from any taxpayer, the City Administrator may conduct investigations and hold hearings concerning any matters arising out of or related to this chapter; and may examine any relevant books, papers, records or memoranda of any such taxpayer; and may require the attendance or appearance of such taxpayer, or any officer or employee of such taxpayer, or of any person having knowledge thereof; and may take testimony or require proof of information provided by the taxpayer. The City Administrator shall have power to administer oaths to such persons.

(e) Sale of business. Whenever any taxpayer sells the taxpayer's business subject to any tax under this chapter or quits engaging in such business, taxpayer shall notify the City at least thirty days before closing of the sale or cessation of operations, and any tax payable under this chapter shall become immediately due and payable and the taxpayer shall immediately make a report and pay the tax due upon the earlier of closing or cessation of business.

(f) Status of unpaid tax in bankruptcy or receivership. Whenever the business or property of any taxpayer subject to this chapter 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 chapter and for which the taxpayer is in any way liable under the terms of this chapter 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 chapter under process or order of any court without first ascertaining from the City Administrator the amount of any taxes due and payable under this chapter; 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 taxes imposed by this chapter, 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, or may be foreclosed by any other method allowed by law or equity. The lien created by this chapter shall apply only to tax obligations incurred after the adoption of applicable provisions of this chapter on which the taxes or lien is based. 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 City Administrator in the same manner as mortgages or judgments are released.

(h) Statute of limitations. Any suit for collection of any taxes imposed by this chapter 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 City Administrator may agree in writing to an extension of any limitation and the period so agreed may be extended by subsequent agreements in writing.

§ 113.50.2. - Failure to file return or pay; delinquency; assessment by City Administrator.

(a) If any person neglects or refuses to file a return or pay any taxes as required by this chapter, the City Administrator may proceed to collect the tax in accordance with applicable law. Not in limitation of the foregoing sentence, the City Administrator may make an estimate, based upon such information as may be reasonably available to the City Administrator, 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 the tax and in addition thereto such penalties and interest as applicable under the circumstances pursuant to subsection 113.50.6 below. Interest shall compound quarterly.

(b) The City Administrator shall give the delinquent taxpayer written notice of any such estimated taxes, penalties, and interest. Such estimate shall be an assessment, and such assessment shall be final and due and payable from the taxpayer to the City ten days from the date of service or mailing of the notice; however, within such ten-day period the delinquent taxpayer may petition the City Administrator for a revision or modification of such assessment and shall, within such ten-day period, furnish the City Administrator the facts and figures supporting a different 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.

(c) The City Administrator shall be authorized to modify such assessment as the City Administrator determines appropriate in accordance with the facts and figures which the City Administrator deems correct. Any adjusted assessment shall be made in writing and notice thereof provided to the taxpayer within ten days. All decisions shall become final upon the expiration of 30 days from the date of service or mailing unless proceedings are commenced within that time for appeal in the District Court of Sarpy County, Nebraska in accordance with applicable laws, rules, and regulations.

§ 113.50.3. - Jeopardy assessment.

(a) If the City Administrator finds that collection of any tax will be jeopardized by delay, the City Administrator, in the City Administrator's discretion, 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 City Administrator may proceed to collect such tax.

(b) Collection may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the City Administrator.

§ 113.50.4. - Recovery of unpaid tax by action at law.

(a) The City Administrator may treat any taxes, penalties or interest due and unpaid as a debt due the City, recoverable as permitted by applicable law or equity.

(b) In case of failure to pay the taxes, or any portion thereof, or any penalty or interest thereon when due, the City Administrator may recover at law the amount of such taxes, penalties and interest in any court of Sarpy County or of the county in which the taxpayer resides or has a place of business.

(c) The return of the taxpayer or the assessment, penalties, or interest made or calculated by the City Administrator, as herein provided, shall be prima facie proof of the amount due.

(d) Such actions, in addition to any other permissible action under applicable law, 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 City Administrator except as may be required by statute, nor shall any constable or sheriff require of the City Administrator 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 City Administrator may prosecute appeals or writs of error in such cases without the necessity of providing bond therefor.

(e) The City Attorney, when requested by the City Administrator, may commence an action for the recovery of taxes, penalties or interest due under this chapter. This and all other remedies set forth in this chapter shall be in addition to all other applicable remedies provided in the code, statutes or applicable law.

§ 113.50.5. - City a party to title actions for determination of lien.

In any action affecting title, ownership, or rights in or to real estate or personal property subject to attachment of a lien for collection of taxes pursuant to this

chapter, 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.

§ 113.50.6. - Penalties and Interest.

(a) *Penalties and interest for deficiencies for reasons other than fraud or intent to evade.* If any part of any deficiency under this chapter is for reasons other than fraud or an intent to evade the tax, 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 and additional amount from the earlier of the date the return or payment was due until filed and paid, from the person required to file the return or pay the tax, which deficiency, interest and addition shall be paid within ten days after written notice and demand by the City Administrator.

(b) *Penalties and interest for deficiency in cases of intent to defraud or evade.* If any part of a deficiency under this chapter is due to fraud or intent to evade the tax, then there shall be added fifty percent of the total amount of the deficiency, and in such case the whole amount of the tax that is unpaid and such additions, and interest on such amounts and additions calculated in the manner described in subsection “a” above, shall be paid within ten days after written notice and demand by the City Administrator.

(c) *Order of Application of Payments.* Any payments received by the City pursuant to this section shall be applied in the following order: First to pay any interest, next to pay any late fees or other charges, and any remainder to the principal amount of tax that is due.

§ 113.50.7. - Authority of City Administrator to waive penalty.

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

Section 2. Repeal of Conflicting Provisions. Section 113.10 of the La Vista Municipal Code, and any part of any other previously enacted ordinance that conflicts with any part of this Ordinance, are hereby repealed.

Section 3. 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 4. Publication and Effective Date. This Ordinance shall be published and shall be in force and take effect from and after its passage and approval as provided by law.

PASSED AND APPROVED THIS 20TH DAY OF AUGUST 2019.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Bueth, CMC
City Clerk

~~§ 113.10 FAILURE TO PAY.~~

~~If any person, company or corporation fails or neglects to pay the occupation taxes as provided herein on the day it becomes due and payable, a late fee in such amount as set from time to time by the Mayor and the City Council shall be added and the city shall then proceed by civil suit to collect the amount due. (Neb. RS 17-525) ('79 Code, § 10-508) (Am. Ord. 927, passed 2-3-04)~~