

21-31 Restaurant, hotel, amusements and admissions taxes.

(I) GENERAL PROVISIONS:

(A) *Title*: This section may be cited as the "Restaurant, Hotels, Amusements and Admissions Taxes Ordinance."

(B) *Purpose and Authority*: This section is enacted to raise revenue for municipal purposes pursuant to the Charter of the City of Burlington, Act No. 298, Acts of 1949, Sections 48III and 48XXIV.

The city council originally adopted this tax on January 30, 1986. Included in that ordinance was subsection "XVI Sunset." Subsequent to the adoption of the ordinance, the voters recommended and the Legislature adopted a change to the City Charter (Acts of 1986, M-21) which established a system of tax classification in Burlington.

That city council and each successor city council has construed the 1986 tax ordinance not to have sunset, to have been in continuous effect, and each has adopted a city budget which collected and expended funds raised by that 1986 ordinance.

On April 2, 1990, the Superior Court construed the intention of the 1986 enactment of this ordinance to trigger a sunset of it effective June 30, 1987, and declared it no longer effective.

The city council hereby enacts this ordinance as both a prospective and retroactive curative adoption. The city council views the Superior Court's construction of the intention of our predecessor 1986 city council to be erroneous. Despite the fact that an appeal of that decision is pending at the time of this enactment, the city council finds that prudence further necessitates that this curative action also be taken by us as the local legislative body of the city.

It is therefore the express legislative purpose of this 1990 enactment of this ordinance to:

(1) Adopt the "Restaurant, Hotel, Amusements, and Admissions Taxes Ordinance," Code of Ordinances, Section [21-31](#), without the sunset clause which appeared at subsection XVI of the 1986 enactment, and which gave rise to the Superior Court declaration of defect in the ordinance's continued effectiveness after June 30, 1987; and

(2) Make this enactment, which has eliminated the former sunset clause altogether, retroactive to the effective date of the original tax ordinance adopted January 30, 1986.

(II) **TAXES IMPOSED:**

(A) *Restaurant Tax:* There is hereby imposed a business occupation tax upon all persons engaged in the restaurant business of whatever name or character in the City of Burlington. The tax imposed shall be at the rate of two (2) percent of the gross receipts from taxable business, as defined herein, done per monthly period in accordance with the provisions of this section.

(B) *Hotel and Motel Tax:* There is hereby imposed a business occupation tax upon all persons engaged in the hotel or motel business of whatever name or character within the City of Burlington. The tax imposed shall be at a rate of two (2) percent of gross receipts from taxable business, as herein defined, done per monthly period in accordance with the provisions of this section.

(C) *Amusements Tax:* There is hereby imposed a business occupation tax upon all persons engaged in the business of operating places of amusement, including, but not limited to, pool halls, arcades, bowling alleys, or operating any establishment making available use of amusement devices of whatever name or character within the City of Burlington. The tax imposed shall be at the rate of two (2) percent of taxable business, as defined herein, done per monthly period in accordance with the provisions of this section.

(D) *Admissions Tax:* There is hereby imposed a tax on admissions to circuses, menageries, carnivals, cinemas, shows of every kind, plays, athletic contests, exhibitions or entertainments for money of whatever name or character except those of educational or nonprofit institutions or organizations or wholly for charitable purposes. The tax imposed shall be at the rate of two (2) percent of the gross receipts from such admissions, as defined herein, done per monthly period in accordance with the provisions of this section.

(E) *Compliance Required:* It shall be unlawful for any person to transact or carry on any business, occupation or activity subject to the provisions of this section without complying with all applicable provisions herein.

(III) **DEFINITIONS:** For the purposes of this section, the following terms, phrases, words and their derivations shall have the meanings given herein:

- (A) *Person* means any individual, male or female, estate, trust, receiver, cooperative association, domestic and foreign corporation, syndicate, joint stock corporation, partnership of any kind, club and society.
- (B) *Council* means the city council of the City of Burlington, Vermont.
- (C) *Treasurer* means the treasurer of the City of Burlington, or his/her designated representative.
- (D) *Gross Receipts* means the total amounts received or receivable and the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed when such act or service is done as part of or in connection with a taxable admission or a taxable business as herein defined. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deductions therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" shall be the following:
- (I) Cash discounts allowed and taken. For the purpose of this section, "cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date.
- (2) Any tax required by Chapter [225](#) or Chapter [233](#) of Title [32](#) Vermont Statutes Annotated.
- (E) *Monthly Period* means such period which shall begin on the first day of each calendar month and includes the last day of each calendar month.
- (F) *Successor* means any person who shall, through direct or mense conveyance, purchase or succeed to the business, or portion thereof, or the whole or any part of the stocks, goods, wares or merchandise or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging or otherwise disposing of his business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.
- (G) *Taxable Business* means:

- (1) Sales of any food or food products prepared on premises and delivered to the purchaser ready to eat, or of beverages, including alcoholic beverages, served for consumption on premises, but shall not include:
- (a) Meals served on the premises of day care centers, nurseries, kindergartens, elementary or secondary schools;
 - (b) Meals prepared by the employees thereof and served to the patients or wards of any hospital, convalescent home, sanitorium, group home, nursing home or home for the aged;
 - (c) Meals furnished to the elderly pursuant to the Older Americans Act 42 USC, Chapter 35, Subchapter VII;
 - (d) Meals sold by nonprofit organizations at bazaars, fairs picnics, church suppers or similar events.
- (2) Rental of hotel and motel rooms including the conduct of incidental activities such as conduct of conventions, seminars and meetings on hotel or motel premises.
- (3) Charges of any kind received, including admission or minimum charges for the use of pool halls, billiard tables, bowling alleys, arcades, electric amusement devices, mechanical amusement devices, or the use of other places of amusement or of amusement devices of whatever name and character.
- (H) *Taxpayer* includes any individual, group of individuals, corporation, partnership or association required to pay a tax under this section, or any person who engages in any occupation for which tax is imposed by this section.
- (I) *Hotel or Motel* means an establishment which holds itself out to the public by offering sleeping accommodations and food for consideration, whether or not the major portion of its operating receipts is derived therefrom and whether or not the sleeping accommodations are offered to the public by the owner or proprietor or lessee, sub-lessee, mortgagee, licensee, or any other person or agent of any of the foregoing. The term "hotel" shall not include the following:

(1) A hospital, licensed un Chapter 43 of Title 18, or a sanitorium, convalescent home, nursing home or a home for the aged.

(2) An establishment operated by a nonprofit corporation or association organized and operated exclusively for religious, charitable or educational purposes, one or more, which, in furtherance of any of the purposes for which it was organized, operates a hotel as defined herein.

(J) *Restaurant* means every eating and drinking establishment operated within the City of Burlington, including every restaurant, cafe, lunch counter, private and social club, bar, tavern, diner, cafeteria, delicatessen, sandwich shop, or other place, where any food or food products are prepared and delivered on premises to the purchaser ready to eat, or where beverages, including alcoholic beverages, are served for consumption on premises, or both, and for which charge is made. This term shall not include caterers who do not prepare and deliver food and beverages to customers at the caterer's place of business. This term shall include all sites of athletic contests, shows, performances, movies, theaters and entertainment places where food, beverages, including alcoholic beverages, or refreshments are sold for consumption on premises.

(K) *Sworn Statement* shall mean an affidavit sworn to before a person authorized to take oaths, or a declaration or certification made under penalty of perjury or an accounting of gross receipts of business done as required to be filed under this section.

(IV) *TAX-WHEN DUE:*

(A) Every taxpayer subject to the provisions of this section shall file within thirty (30) days of the effective date hereof an application with the treasurer for a taxpayer identification number. This application shall contain the legal name of the taxpayer, any trade name(s) employed, the address, place(s) of business within the city, principal place of business, phone number, authorized agent for service of process, the type(s) of taxable admissions received by the taxpayer and that taxable business(es) in which the taxpayer is engaged. Upon receipt of a complete application, the treasurer shall issue to each taxpayer an identification number. Failure of a taxpayer, or anyone reasonable likely to be a taxpayer as herein defined at the time that levy of the taxes herein commences, to file for an identification number shall be a violation.

(B) The tax imposed by this section shall be due and payable commencing March 1, 1986, in monthly installments and remittance therefor shall be made on or before the last day of the month next succeeding the end of the monthly period in which the tax accrued. The remittance shall be made as provided in this section and shall be accompanied by a return on a form to be provided and prescribed by the city treasurer. The taxpayer shall be required to make a sworn statement that the information therein given is complete and true and that the taxpayer knows the same to be so.

(C) If a person fails to file a return under oath when required to do so by this section, the treasurer, with the approval of the city council, shall fix his gross receipts using any information in his possession for the period in respect to which such person has failed to file a return, and shall assess the amount of tax due including applicable penalties.

(D) The tax shall be considered delinquent on the day after it becomes due and payable pursuant to subsection (B) above.

(E) If the treasurer determines that a taxpayer has failed to pay any tax, penalty or portion thereof due under this section, the treasurer shall mail to such taxpayer a statement showing the balance due and shall add thereto a thirteen dollar (\$13.00) late penalty payment or interest at the rate of twelve (12) percent per year, whichever is greater. That unpaid balance and penalty total shall be subject to interest at a rate of twelve (12) percent per year from the date of underpayment. Such interest shall accrue until the date of payment. Within five (5) days from the date the statement is mailed, the taxpayer shall pay such balance and all interest due thereon. No such demand shall be made more than four (4) years after the close of the fiscal year in which the same accrued, except"

(1) As against a taxpayer who has been guilty of any fraud or misrepresentation of material facts; or

(2) Where a taxpayer has executed a written waiver of such limitation.

(F) In the event any business subject to the tax defined herein closes or changes ownership, said business shall file a closing return with the city treasurer and pay the tax due within thirty (30) days from the time of closing or changing of ownership of said business. A closing return shall be construed delinquent if not filed within the specified time.

In the event a business referenced above fails to file a closing return, it shall be the responsibility of the successor to file the return and pay any taxes and penalties due thereunder.

(G) It shall be the responsibility of the taxpayer to advise the city treasurer of any change in the type of business or the activities carried on.

(H) The treasurer may, for good cause and with the approval of the city council, extend for not more than ninety (90) days the time for paying any sum, or a portion thereof, required to be paid hereunder. The extension may be granted at any time, provided a written request therefor is filed with the city treasurer prior to the delinquency date. Interest at the rate herein stated shall accrue during the period of extension.

(V) *PAYMENT OF TAX:* At the time the return is required to be filed under this section, the tax shall be paid to the city treasurer by bank draft, certified check, cashier's check, personal check or money order, or in cash. If payment is made by draft or check, the tax shall not be deemed paid unless the check or draft is honored in the usual course of business; nor shall the acceptance of any sum by the treasurer be an acquittance or discharge of the tax due unless the amount of the payment is in full and actual amount due. The return shall be presented to the city treasurer who shall endorse thereon the date and amount of the payment received by him and forthwith file the return in the office of city treasurer.

(VI) *EXAMINATION OF RECORDS:*

(a) The treasurer or his/her designee is hereby authorized to request, examine, audit and inspect such books and records of any taxable business as may be relevant or necessary to verify or ascertain the amount of the tax due.

(b) All persons engaged in occupations subject to the provisions of this section are hereby required to permit examination of such books and records for the purpose aforesaid.

(VII) *INFORMATION CONFIDENTIAL:*

(A) Financial information furnished or secured pursuant to this section shall be deemed confidential in character and shall not be subject to public inspection and shall be kept so that the contents thereof shall not become known except to the person charged with the administration and enforcement of this section.

(B) No officer, administrator or employee of the City of Burlington shall in any manner reveal the contents of any part or portion of the contents of any confidential information except as otherwise provided in this section, or in a legal action to enforce the provisions of this section, or pursuant to a court order.

(VIII) *RECONSIDERATION AND APPEAL*

(A) Any person aggrieved by any decision of the treasurer with respect to the assessment of any tax or penalty by the treasurer, or any person aggrieved by the refusal of the treasurer to make a refund requested under paragraph (IX), may petition the treasurer for a reconsideration within sixty (60) days after notice shall have been given such person. If a petition for reconsideration is not filed within such period, the amount of the assessment or the refusal to refund shall become final. If a petition is filed within such period, the treasurer shall reconsider his earlier action within twenty (20) days and, if the petitioner so requested in his petition, shall grant said petitioner an oral hearing and shall give the petitioner ten (10) days' notice of the time and place thereof. The treasurer shall issue his final determination in writing to the petitioner within ten (10) days of the petition or the close of the hearing, whichever is later.

(B) An appeal from any decision of the treasurer issued under subsection (A) above shall be taken to the superior court by filing notice of such appeal with the treasurer. Such notice shall be accompanied by a citation to the treasurer, signed by the clerk of the court, ordering that the treasurer appear before such court. The appeal shall be returnable at the same time and served and returned in the same manner as is required in the case of summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the city, with surety, to prosecute the appeal, and to comply with the orders and decrees of the court.

Such court may grant such relief as may be equitable and may order the treasurer to pay to the aggrieved taxpayer the amount of such relief with interest at the rate of six (6) percent per annum. Upon any appeal denied, costs may be taxed against the appellant, but no costs shall be taxed against the city.

(C) If a petition or an appeal is not taken in strict conformance to this paragraph (VIII), the decision of the treasurer shall be final. The remedies provided by this paragraph (VIII) shall be the exclusive remedies of a taxpayer with respect to any decision taken under this section. Upon failure to petition or appeal as provided under this section, the taxpayer shall be bound by

such decision and shall not thereafter contest, either directly or indirectly, such decision in any proceeding, including, without limitation, any proceeding brought to enforce any provision of this section.

(IX) *REFUNDS:*

(A) In the event of overpayment of any tax due under this section, the treasurer, or his authorized agent, upon written application by the taxpayer for a refund or credit filed within two (2) years after the date of such overpayment, may offset the amount of such overpayment against the taxpayer's existing tax liability under this section or certify the request for refund for the purpose of processing a cash payment to such taxpayer. Refund of overpayments as authorized in this paragraph (IX) shall be approved by the city council.

(B) No refund or credit may be allowed with respect to any payments made to the city more than two (2) years before the date of such application. Provided, however, where a taxpayer makes application for a refund or credit of any overpayment made more than two (2) years before the date of such application and such taxpayer has an outstanding tax deficiency, the amount of the refund or credit which would otherwise be allowable for the portion of the assessment period preceding the two-year period shall be offset against any such deficiency.

(X) *FAILURE TO COMPLY; FALSE RETURNS OR STATEMENTS:* It shall be unlawful for any person subject to the provisions of this section to fail or refuse to do any act required by this section. It shall also be a violation of this section for any person to make any false or fraudulent application or return or any false statement or any representation in or in connection with any such application or return, or to aid or abet another in any attempt to evade payment of the tax, or any part thereof. Any such violations shall be punished as provided in Section [1-9](#) of this Code.

(XI) *COLLECTION OF DELINQUENT TAX:* Any tax due and unpaid and delinquent under this section, and all penalties thereon, may be collected by civil action, which remedy shall be in addition to any and all existing remedies.

(XII) *TAX AS A DEBT:* *The amount of the tax and penalty imposed by the provisions of this section shall be deemed a debt to the city.*

(XIII) *REMEDIES CUMULATIVE:*

(A) All remedies prescribed in this section shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

(B) The conviction and punishment of any person for violation of this section shall not excuse or exempt such person from the payment of any tax due or unpaid at the time of such conviction.

(XIV) *ADMINISTRATION RULES AND REGULATIONS:* The council shall have the power and it shall be its duty from time to time to adopt, publish and enforce rules and regulations for the purpose of carrying out the provisions of this section and it shall be unlawful to violate or fail to comply with any such rule or regulation.

(XV) *SEVERABILITY:* If any part or parts or application of any part of this section is held invalid, such holding shall not affect the validity of the remaining parts of this section.

(Ord. of 1-30-86; Ord. of 4-16-90; Ord. of 6-11-91; Ord. of 5-15-00; Ord. of 5-19-03)

Charter reference—Power of city council to regulate and license, § 48(XXIV).