

ORDINANCE NO. 2342

AN ORDINANCE OF THE CITY OF LEXINGTON, NEBRASKA, AMENDING SECTION 18-45 OF THE LEXINGTON CITY CODE RELATED TO OCCUPATION TAXES; TO REPEAL ORIGINAL SECTION 18-45 AND ALL OTHER ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA AS FOLLOWS:

Section 1. That Section 18-45 of the Lexington City Code is hereby amended to read as follows:

Sec. 18-45. - Schedule.

There is hereby levied an occupation tax upon each and every occupation and business within the city, upon the several respective occupations, professions and lines of business, and in the several different amounts, as follows:

- (1) *Fireworks.* Owners or operators of a stand or booth for sale of fireworks as follows:
 - a. By a resident of the city, including the owner or operator of an existing business establishment within the city, per season: \$75.00.
 - b. By a nonresident of the city, per season: \$300.00.
 - c. Certificate. Each person or business paying an occupation tax as aforesaid shall display for public inspection a certificate or receipt from the city clerk, showing payment of such occupation tax.
- (2) *Telephone companies, telecommunications companies, and mobile telecommunications services.* For engaging in the business of providing local exchange telephone service, intrastate message toll telephone service and mobile telecommunications services for revenue in the city.
 - a. *Mobile telecommunications services, defined.* As used in this section, the term "mobile telecommunications services" means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:
 1. Both one-way and two-way wireless communications services;
 2. A mobile service which provides a regularly interacting group of base, mobile, portable and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
 3. Any personal communications service.
 - b. *Amount of tax.* The occupation tax shall be five percent of the gross income received from furnishing local exchange telephone service and intrastate message toll telephone

service, other than mobile telecommunications services as defined in this section, from subscribers within the corporate limits of the city. If the telecommunications services provided are mobile telecommunications services as defined in this section, the tax shall be five percent of the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use within the corporate limits of the city. The term "gross income" does not mean:

1. The gross income, including division of revenue, settlements or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service; or
 2. The gross income attributable to services rendered using a prepaid telephone calling arrangement.
- c. *Quarterly payment due dates.* The payment of any occupation tax levied and imposed by the provisions of this article shall be made in quarterly payments using the calendar quarter year as a basis for determining the due date. Each quarterly payment shall be due 15 days immediately following the termination of each calendar quarter year. Telecommunications providers whose annual receipts are less than \$100 should make annual payments following the end of the calendar year. The provider must coordinate with the city treasurer to arrange this modification.
- d. *Statement to be filed.* Every person coming within the provisions of this article shall, on or before the 15th day of the month immediately following the termination of each calendar year, file with the city treasurer, in the case of those persons taxed by this section, a full, complete and detailed statement of the income and gross receipts of said person for the preceding three calendar months, omitting therefrom the appropriate exceptions and exemptions, if any. All statements shall be duly verified as true and correct and sworn to by the manager or managing officer of such person.
- e. *City's right to inspect.* The city shall have the right at any and all times during business hours to inspect, through the comptroller or some other officer appointed by the city council, the books and records of any person coming under the provisions of this article for the purpose of ascertaining the correctness of the required statement.
- f. *Failure to file statement; interest and penalty.* In the event any person coming under the provisions of this article shall refuse, fail or neglect to furnish or file the required statement at the time or times specified, the occupation tax for the preceding three calendar months shall draw interest at the rate of one percent per month after due and payable, and in addition thereto, a penalty of five percent for the failure to file.
- g. *Interest and penalty on delinquent payments.* All delinquent payments shall draw interest at the rate of one percent per month; and, if delinquent for six months or more, a penalty of five percent shall be added thereto in addition to the interest charge.
- h. *Collection of tax by civil action.* In case any person shall fail to make payment of the occupation tax as required by this article, the city shall have the right and may sue any such person or persons in any court of competent jurisdiction for the amount of the

occupation tax due and payable and may recover judgment against such person for the amount so due, together with interest and penalties, and may have execution thereon.

- i. *Certificate.* The receipt issued after the payment of an occupation tax as aforesaid, shall be the occupation tax certificate. This certificate shall specify the amount of the tax and the name of the person and business that paid the tax.
- (3) *Telecommunications, cable television.* For engaging in the business of providing a television signal for revenue in the city.
- a. *Cable television services, defined.* As used in this section, the term "cable television services" means the furnishing of a television signal, whether through cable or satellite dish, whether by subscription or pay-per-view, provided, any cable television provider having a franchise agreement with the city and paying a franchise fee, shall be excluded from this definition.
 - b. *Amount of tax.* The occupation tax shall be five percent of the gross income received from furnishing cable television services as defined in this section, from subscribers within the corporate limits of the city.
 - c. *Gross income.*
 1. The term "gross income" means any and all revenue billed (whether or not received) or derived directly or indirectly by a provider, its affiliates, subsidiaries, parent or any entity in which the provider has a financial interest from the operation of its cable system within the city including, but not limited to:
 - (i) All cable service fees;
 - (ii) Franchise fees;
 - (iii) Late fees, returned check charges, collection agency charges;
 - (iv) Installation and reconnection fees;
 - (v) Fee payments or other consideration earned (whether or not received) by the provider from programmers for carriage of cable services or marketing support in connection with the cable services on the cable system;
 - (vi) Upgrade and downgrade fees;
 - (vii) Advertising revenue with no deduction or offset for internal commissions earned by employees of the grantee or its affiliates, subsidiaries, parent or any entity in which the grantee has a financial interest, and external commissions earned by advertising agencies/representation firms/brokers/etc., regardless of whether or not such commissions are withheld from remittances to the grantee;
 - (viii) Home shopping commissions;

- (ix) Converter and remote control rental fees;
- (x) Lockout device fees;
- (xi) Guides; and
- (xii) Production charges.

2. The term "gross income" does not include bad debts or any taxes on services furnished by the grantee imposed upon subscribers by any municipality, state or other governmental unit and collected by the provider for such governmental unit. The provider will maintain its books and records in accordance with generally accepted accounting principles (GAAP).

- d. *Quarterly payment due dates.* The payment of any occupation tax levied and imposed by the provisions of this article shall be made in quarterly payments using the calendar quarter year as a basis for determining the due date. Each quarterly payment shall be due 15 days immediately following the termination of each calendar quarter year.
- e. *Statement to be filed.* Every person coming within the provisions of this article shall, on or before the 15th day of the month immediately following the termination of each calendar year, file with the city clerk, in the case of those persons taxed by this section, a full, complete and detailed statement of the income and gross receipts of said person for the preceding three calendar months, omitting therefrom the appropriate exceptions and exemptions, if any. All statements shall be duly verified as true and correct and sworn to by the manager or managing officer of such person.
- f. *City's right to inspect.* The city shall have the right at any and all times during business hours to inspect, through the comptroller or some other officer appointed by the city council, the books and records of any person coming under the provisions of this article for the purpose of ascertaining the correctness of the required statement.
- g. *Failure to file statement; interest and penalty.* In the event any person coming under the provisions of this article shall refuse, fail or neglect to furnish or file the required statement at the time or times specified, the occupation tax for the preceding three calendar months shall draw interest at the rate of one percent per month after due and payable, and in addition thereto, a penalty of five percent for the failure to file.
- h. *Interest and penalty on delinquent payments.* All delinquent payments shall draw interest at the rate of one percent per month; and, if delinquent for six months or more, a penalty of five percent shall be added thereto in addition to the interest charge.
- i. *Collection of tax by civil action.* In case any person shall fail to make payment of the occupation tax as required by this article, the city shall

have the right and may sue any such person or persons in any court of competent jurisdiction for the amount of the occupation tax due and payable and may recover judgment against such person for the amount so due, together with interest and penalties, and may have execution thereon.

- j. *Certificate.* The receipt issued after the payment of an occupation tax as aforesaid shall be the occupation tax certificate. This certificate shall specify the amount of the tax and the name of the person and business that paid the tax.

Section 2. That original Section 18-45 together with all ordinances or sections of ordinances in conflict herewith are hereby repealed.

Section 3. That this Ordinance shall be published in pamphlet form and take effect provided by law.

PASSED AND APPROVED this 11th day of March, 2014.

THE CITY OF LEXINGTON, NEBRASKA

By: _____
Mayor

ATTEST:

City Clerk