

ORDINANCE 2025-03
AN ORDINANCE ADOPTING A RESTAURANT TAX
FOR THE CITY OF HAZARD, KENTUCKY

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§ RESTAURANT TAX.01 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMISSION. The Hazard-Perry County Tourism Commission.

RESTAURANT. Any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grilles, tea rooms, sandwich shops, soda fountains, roadside stands, street vendors, catering kitchens, delicatessens, whether located in a grocery store or free standing, convenience stores and similar places in which food is prepared for sale for consumption on the premises or elsewhere. It does not include school cafeterias which are operated by the school system and not an independent corporation, food vending machines or establishments serving beverage only in single service or original containers. Temporary food stands and street concessions, operated by non-profit organizations are exempt from this tax. Temporary food stands operated by an entity other than a non-profit organization are exempt from this tax if such temporary food stand is operated in conjunction with any organized festival or other public event which is sponsored by the City of Hazard or any department thereof but only if such temporary food stand is operated under a license from the City of Hazard.

§ RESTAURANT TAX.02 RESTAURANT TAX.

On and after January 1, 2025, here is hereby levied upon the retail sale of all food and non-alcoholic beverages by a restaurant located within the municipal limits of the City of Hazard a tax equal to 3% of the gross amount of each sale (excluding any other tax). This tax may or may not be passed on to the ultimate customer/consumer at the discretion of the restaurant.

§ RESTAURANT TAX.03 REPORTING PROCEDURES TO CITY COMMISSION.

- A. The funds collected from this tax shall be deposited into a City of Hazard's account separate and unique from all other funds and revenues collected. All funds deposited therein shall be disbursed to the Commission on a monthly basis. All such money collected shall be used solely for the purpose of promoting and developing convention and tourist activities and facilities in accordance with KRS 91A.390.
- B. The Commission shall obtain approval from the City Council prior to using any revenues from the restaurant tax for the purpose of capital improvements including the purchase or acquisition of land. In the event that an approved capital project must be debt serviced by bonds or bonded by the city, the commission will pledge amounts agreed upon by the commission and City Council necessary to satisfy principal and interest payments of the bond issue.
- C. The Commission is strongly encouraged to obtain approval from the City Council for any projects that are estimated at a cost of \$10,000.00 or more. In obtaining the approval, the Commission must provide the City Council a complete copy of any and all plans, data, research, appraisals, blueprints, etc. regarding the project.
- D. The Commission will provide an annual budget to the City Council.
- E. The Commission shall provide a monthly written report to the City Council which includes all income, expenditures, disbursements and request pertaining to restaurant tax funds.

§ RESTAURANT TAX.04 REPORTING PROCEDURES FOR RESTAURANTS.

On or before the twentieth day of each calendar month, each restaurant owner and/or operator shall report to the Chief Financial Officer on forms provided by the City of Hazard the gross amount of sales of the restaurant from food and non-alcoholic beverages for the preceding calendar month, and calculation of the tax due for that month by computing 3% of its gross sales from food and non-alcoholic beverages along with the sales tax return. The owner/operator of the restaurant shall remit with the form, copy of sales tax and the tax due to the Chief Financial Officer.

§ RESTAURANT TAX.05 TRANSFER OF FUNDS TO HAZARD-PERRY COUNTY TOURISM COMMISSION.

On or before the last day of each calendar month, the Chief Financial Officer shall transfer to the Hazard-Perry County Tourism Commission the gross monies collected from the restaurant tax collected as of the 25th day of the previous month. The Commission shall reimburse the city five percent (5%) of the tax collected as reimbursement for the costs of collections, including but not limited to the cost of reporting forms, postage, court cost, attorney's fees and all other expenses incurred in collection of this tax by the fifth (5th) day following the monthly transfer of funds

§ RESTAURANT TAX.06 COLLECTION AND ENFORCEMENT.

(A) It shall be the duty of the Chief Financial Officer to collect and receive the restaurant tax imposed by this chapter. The Chief Financial Officer may request the assistance of the Hazard City Attorney in enforcing this chapter.

(B) The Chief Financial Officer shall keep records showing the amount paid by each restaurant owner and/or operator and the date of such receipt.

(C) The Chief Financial Officer is hereby charged with the enforcement of provisions of this chapter, and is hereby empowered to prescribe, adopt and promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of the chapter, including but not limited to provisions of the reexamination and correction of returns to which an underpayment or overpayment is

claimed or found to have been made, and the rules and regulations as promulgated by him or her shall be binding upon the taxpayer. Provided, however, all such rules, regulations and decisions shall be subject to the consent and approval of the Mayor and the City Council.

(D) The Chief Financial Officer, or any agent or employee designated by him or her in writing, may examine the books, papers, and records of any restaurant in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of restaurant tax imposed by the terms of this ordinance as he or she may deem is reasonably necessary for the purpose incident to the performance of his or her duties hereunder. The Chief Financial Officer may enforce this right by application to the appropriate court having jurisdiction over these matters.

(E) Every restaurant subject to this chapter shall keep appropriate records showing the gross amount of sales of food and non-alcoholic beverages for a period of four years to demonstrate compliance with this chapter.

(F) In the event a restaurant fails to pay the restaurant taxes, interest and penalties due pursuant to this chapter the president, vice-president, secretary, treasurer or any other person holding an equivalent corporate office, any member of a limited liability company or corporation, and all partners of a partnership owning, managing and/or operating a restaurant shall be personally and individually liable both jointly and severally for the payment of all sums due pursuant to this chapter.

(G) A restaurant owner and/or operator who collects the restaurant tax and who fails to file a return and make payments therewith shall in addition to the penalties prescribed herein upon conviction be subject to a fine of not less than \$50 nor more than \$500, or imprisonment for not more than 30 days, or both such fine and imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed within this chapter.

§ RESTAURANT TAX.07 INTEREST AND PENALTIES.

(A) Any person who fails to file any return required within the time specified herein or who fails to pay such restaurant tax when same shall become due, shall be charged a penalty of 5% of the amount of the unpaid restaurant tax for each month such return remains unfiled tax unpaid up to a maximum of 25% of the unpaid tax.

(B) All restaurant taxes imposed by this chapter which remain unpaid after they become due

shall bear interest at the rate of 1.5% per month or part thereof.

(C) Any person who shall fail, neglect or refuse to make any return or pay any tax due required by this chapter, or to pay the city those so withheld under the terms of this chapter, or any person who shall refuse to permit the Chief Financial Officer or any agent or employee designated by him or her in writing, to examine books, records, and papers pertaining to information required under this chapter, or who shall knowingly make any incomplete, false, or fraudulent return, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of gross receipts in order to avoid the payment of

the whole or any part of the restaurant license tax, shall become liable to the City for such tax as well as the interest and penalty thereon, and shall in addition, be subject to a fine of not less than \$50 or more than \$500 or imprisonment for not less than 30 days. Such criminal penalties shall be in addition to the interest and penalties imposed herein.

§ RESTAURANT TAX.08 DUTIES OF THE CHIEF FINANCIAL OFFICER OR DESIGNEE.

The Chief Financial Officer, or any agent or employee designated by him or her in writing, shall have the following duties in connection with the restaurant tax:

(A) Keep accurate records of all returns and of all sums received for restaurant taxes. Such records shall contain the names and addresses of each taxpayer, and the dates and amounts of payments. He or she shall keep the original returns on file for a period of not less than four years after filing.

(B) Enforce the provisions of this chapter, all in accordance with any policies set forth in any ordinance, municipal order, or executive order.

(C) Prepare forms and instructions for the returns and payments required by this chapter.

(D) Examine returns, and for any returns appearing to be incorrect or incomplete, make inquiries, investigations, and adjustments in the amount of tax due.

(E) Where necessary to determine accurate figures for determining the amount of tax due, examine books, records, and information stored in computers of any taxpayer, provided that each city officer or employee acting under this chapter shall identify himself or herself and request the information desired. If the officer or employee is refused admission to any place of business or refused access to any records or computer memory, the Chief Financial Officer or employee shall leave the premises and shall seek an appropriate court order, with the assistance of the City Attorney, to obtain access to the information needed.

(F) The Chief Financial Officer shall approve the form of all returns and written instructions prior to use by an agent or employee designated by him or her in writing.

(G) The Chief Financial Officer may prepare pamphlets for distribution to the public, clearly explaining the restaurant tax, returns, and payments required.

§ RESTAURANT TAX.09 PROCEDURES FOR APPLYING FOR REFUND OF OVERPAYMENT.

(A) Any taxpayer who believes that he has made or permitted an overpayment of his or her liability for any restaurant tax required by this chapter may apply for a refund of said overpayment provided that he or she files an amended return, verified under oath and setting forth in detail the full explanation of the reason of the said claimed

overpayment, within one year of the date of said overpayment is made or the date he or she said restaurant tax payment was due, whichever occurs first.

(B) If a refund has been properly claimed according to the provisions hereof, the Chief Financial Officer shall have the authority to honor and refund any such overpayment actually made above actual liability upon the restaurant tax required under this chapter which he or she determines within his or her discretion was made through honest mistake or inadvertence without interest thereon.

(C) In no event shall any refund be made for any payment upon any restaurant tax unless the refund claim is submitted and filed in strict compliance with the foregoing provisions of this section.

§ RESTAURANT TAX.10 FAILURE TO FILE RETURN, FAILURE TO PAY THE RESTAURANT TAX WITHHELD, UNDERPAYMENT OF AMOUNT DUE.

(A) If the taxpayer liable for collecting the restaurant tax and filing a return fails to file a return, the Chief Financial Officer shall prepare an estimate of the amount of restaurant taxes due based on the best information available to him or her. The Chief Financial Officer may make investigations to assist in making the estimate. He or she may consider the volume of business done in the same type of business, and any other relevant matters. When the Chief Financial Officer estimates the restaurant taxes, the amount of interest and late charges provided by this chapter shall be added to the taxes due. He or she shall notify the taxpayer of the amount due. Such notification shall be in writing and shall contain a brief description of the method and estimated figures used in arriving at the estimated tax. Any taxpayer may dispute the amount of the estimated tax by filing within 30 days of notification of the estimated taxes a return accompanied by payment of the entire balance due together with the interest and late charges due. Such return shall be processed like any late return and shall establish the restaurant tax liability of the taxpayer in place of the estimated amount prepared by the Chief Financial Officer. However, the Chief Financial Officer may later determine that the amount shown in the return is insufficient so there is a deficiency, in the same manner as in the case of other returns.

(B) If the Chief Financial Officer determines, by examining available evidence, that the amount of restaurant taxes paid by the taxpayer is less than the amount required by this chapter, he or she shall notify the taxpayer of the deficiency. The Chief Financial Officer may use any of the methods authorized in division (A) of this section to determine whether a deficiency exists and to determine the amount of such deficiency. He or she shall thereupon notify the taxpayer of the deficiency. Such notice shall be in writing and shall state not only the amount of the deficiency but also the methods and estimates used in arriving at the amount of the deficiency. If the taxpayer does not object in writing within 30 days of the date of receiving such notice, the taxpayer shall be deemed to have accepted the revised figures for the restaurant tax liability. If the taxpayer does file written objection within the time specified, the taxpayer shall pay the fees, together with penalties and interest, under protest and may thereupon pursue administrative and judicial remedies as provided by this chapter and by state law to seek a refund.

(C) If the Chief Financial Officer finds that any taxpayer has overpaid, he or she shall notify them of overpayment and shall refund the amount of the overpayment to them without interest thereon.

(D) When the Chief Financial Officer notifies any taxpayer of any estimated amount due, alleged overpayment, or refund, he or she shall include in the notice clear instructions on how, when, and where the taxpayer may protest or appeal the decision.

(E) If any taxpayer or any person, firm, association, or corporation required by this chapter to pay a restaurant tax or to file a return shall fail to file any return for any month, such failure to file shall constitute a continuing offense against the city and the Chief Financial Officer may proceed to estimate and collect the restaurant taxes at any time.

(F) If a taxpayer fails to pay the restaurant tax due pursuant to this chapter and such failure continues for more than 90 days after written notice thereof, the city shall have the right to suspend such taxpayer's license to transact business within the city until all taxes, interest and penalties due pursuant to this chapter have been paid in full.

(G) The City of Hazard shall have a lien upon all property, real and personal, of any restaurant to secure the unpaid tax receipts due from that restaurant, which lien shall be perfected by filing a notice of the tax due and a statement of lien in the office of the Perry County Court Clerk's Office.

(H) In the event the City of Hazard is required to file suit or take other legal action to collect the sums due pursuant to this chapter, the city shall be entitled to recover its reasonable attorney fees and costs actually incurred associated therewith.

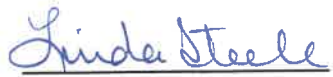
§Restaurant Tax .11 INFORMATION DEEMED CONFIDENTIAL; PENALTY FOR DISCLOSURE; EXCEPTIONS.

Any information, including returns, documents, or payments made pursuant hereto and any other information gained by the Chief Financial Officer or any other official, agent, or employee of the city as a result of any return, investigation, hearing or verification required or authorized by the subchapter shall be confidential; except, in accordance with proper judicial order, and any person or agent divulging such information shall, upon conviction, be subject to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisonment not to exceed thirty (30) days, or both, at the discretion of the court, and upon conviction shall be dismissed from employment by the city. Provided, however, such person may disclose to the Commissioner of the Revenue Cabinet of the state or his or her duly authorized agent, or the other Commissioner of Internal Revenue Service, or his or her duly authorized agent, all such information and extend the right to inspect any of the books and records of the city to said Commissioner of the Revenue Cabinet of the state and/or to said Commissioner of the Internal Revenue Service who must grant to the city the reciprocal right to obtain information from the files and records of the internal Revenue Service and maintains the privileged character of the information so furnished to them.

The tax provided for in this chapter is levied, commencing on the 1st day of January 2025. The first report and remittance of tax due from restaurant operators shall be on February 20, 2025.

First Reading: October 21, 2024.

Second Reading: November 18, 2024.



Linda Steele
Hazard City Clerk



Donald "Happy" Mobelini
Mayor, City of Hazard