

**ORDINANCE OF THE
CITY OF LONE TREE**

Series of 2000

Ordinance No. 00-09

AN ORDINANCE ESTABLISHING THE LONE TREE ADMISSIONS TAX AND THEREBY SETTING THE TAX RATE AT FOUR PERCENT (4%) TO BE CHARGED ON EACH TAXABLE TRANSACTION WITHIN THE CITY EFFECTIVE ON FEBRUARY 1, 2001.

THE COUNCIL OF THE CITY OF LONE TREE, COLORADO, ORDAINS:

ARTICLE I. - AUTHORITY

The registered electors of the City of Lone Tree (the "City") approved Admission Tax Ordinance 98-05 in the November 3, 1998 election. The City is a home rule municipality operating under a Charter adopted May 5, 1998. Pursuant to the Charter and the authority given to home rule cities, the City may adopt Ordinances.

ARTICLE II. - PURPOSE

The primary purpose of this Ordinance is to implement, as of February 1, 2001, the Admissions Tax Ordinance and to set the Admissions tax rate at four percent (4%) on every person who pays to gain Admission to any Place or Event Open to the Public, and to require every Person, whether owner, lessee or operator, who charges or causes to be charged Admission to any such Place or Event Open to the Public to collect such Admissions tax for the City.

ARTICLE III. - EFFECTIVE DATE

This Ordinance shall become effective on and after 12:01 a.m., February 1, 2001, from which time there shall be levied and collected and paid a tax by every person exercising the taxable privilege of this ordinance for the exercise of such privilege.

ARTICLE IV. - DEFINITIONS

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

1. "Admission(s)" shall mean any "Place or Event Open to the Public", the Admission or access of which is open to members of the public upon payment of a charge or fee or in which a rental fee is charged for the use of equipment. This term may include, by way of illustration but not by way of limitation, the following places and events when a charge or fee for Admission to such places and events is placed upon members of the public:

A. Any performance of a motion picture, stage show, play, concert, festival, carnival, circus, play, concert or other manifestation of the performing arts.

B. Any sporting or athletic contest, exhibition or event, whether amateur or professional and whether the Person is acting as a spectator or participant.

C. Any rental of sporting or gaming equipment including but not limited to pool tables, bowling balls and shoes, darts or dart boards, ski equipment, bikes, in-line skates and pads, fishing equipment, boats or boating equipment, backpacking equipment.

D. Any lecture, rally, speech or dissertation.

E. Any showing, display or exhibition of any type, such as an art exhibit.

F. Any restaurant, tavern, lounge, bar or club, whether the Admission charge is termed a "cover charge", "door charge" or any other such term.

2. "City" means the City of Lone Tree.

3. "Gross Taxable Sales" shall mean the total amount, valued in money, received or to be received in money, credits, property or other consideration derived from sales of Admissions subject to the tax imposed by this article.

4. "Person" means any individual, partnership, limited liability company, association, joint stock company, club, association, agent, referee, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known and acting in any kind of unit, in the plural as well as the singular number.

5. "Purchase" or "Sale" shall mean contract for sale and include any transaction for furnishing by any person to any person the taxable privilege of Admission as herein defined.

6. "Purchaser" shall mean any person to whom the taxable privilege of Admission is or has been rendered.

7. "Tax" shall mean either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor.

8. "Taxpayer" shall mean any person obligated to account to the City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this article.

9. "Vendor" shall mean a person making a sale to a Purchaser of the taxable privilege of Admission.

ARTICLE V. - IMPOSITION OF THE TAX

1. On and after 12:01 a.m., February 1, 2001, there is hereby levied and there shall be collected and paid a tax by every Person exercising the taxable privilege of this ordinance for the exercise of such privilege.

2. The amount of the tax hereby levied is four (4) percent of the price of each Admission; provided that a tax derived from calculations resulting in a fraction of a cent being a part of the tax shall be increased or rounded to the next whole cent. If a block of Admissions is sold to a single Purchaser at a bulk rate, the tax shall be computed on the bulk rate in such case instead of on individual Admissions, provided that none of the tickets in the block are resold.

ARTICLE VI. - EXEMPTIONS

1. The providing of free passes, complimentary Admission tickets or otherwise, where no Admission price is charged or paid, shall exempt that Person from payment of the tax imposed herein; however, if a reduced charge for Admission is made, whether for a pass, complimentary Admission or otherwise, the tax applicable to the amount of such charge.

2. In no event shall the Admissions tax be sought when a Sale is made to an organization that would be exempt under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE VII. - COLLECTION, ADMINISTRATION AND ENFORCEMENT

1. Collection Of Tax By Vendor And Vendor Liability

A. Every owner or operator who charges Admission or causes Admission to be charged to any Place or Event Open to the Public shall be liable for the

collection and remittance of the tax. If an owner or operator of a facility leases or rents such facility to another party, which in turn sponsors or conducts some public event in such facility, such owner or operator shall be relieved of the liability of collecting and remitting the tax, only if the party to whom the facility is leased or rented is, at the time of such lease or rental, licensed to collect and remit the tax.

B. The tax to be collected as provided in this Ordinance shall be stated and charged separately from the Admissions charge on any record thereof at the time when the charge is made or at the time when evidence of the charge is issued or employed by the owner or operator. When added, such tax shall constitute a part of such purchase price or charge and shall be a debt from the Purchaser to the owner or operator until paid and shall be recoverable at law in the same manner as other debts. The Purchaser shall pay the tax to the owner or operator, as trustee for and on account of the City and the Owner or operator shall be liable for the collection therefor and on account of the City.

C. Taxes paid on the amount of gross Admissions charges that are represented by accounts which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State of Colorado, may be credited upon subsequent payment of the tax herein provided. However, if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount so collected.

D. The burden of proving that any transaction is not subject to the tax implemented by this Ordinance shall be upon the Person upon whom the duty to collect the tax is imposed.

E. Every Vendor shall add the tax imposed by this article to the purchase price, charge or other consideration paid for the taxable privilege of admission, provided, however, that the Vendor shall be liable and responsible to the city for the payment of an amount equivalent to said tax on each such Admission based on his gross taxable sales.

F. A credit will be allowed if the taxpayer refunds an Admissions sale, provided that the taxpayer thereon has refunded the full Admissions price thereof and the full tax due and paid to the Purchaser.

2. Remittance Of Admissions Tax Collected By Vendor

A. Vendor shall remit to the City taxes collected pursuant to this Ordinance.

B. Every Vendor shall file a tax return each month with the City Manager on or before the twentieth day of each month for the preceding month and remit the tax due to the City simultaneously therewith, except as may be otherwise permitted by the City Manager pursuant to Paragraph 3 of this Article. The monthly amounts

remitted to the City Manager shall be made in such manner and upon such forms as the City Manager may prescribe.

C. If any Vendor shall, during any reporting period, or for any transaction, collect as a tax an amount in excess of the rate stated in Article V, the Vendor shall remit to the City Manager the full amount of the tax imposed and such excess. If the taxpayer undercollects tax on any Admissions sale, the Vendor shall remit the full amount actually due in accordance with Article V. The Vendor shall not net overcollected and undercollected taxes for reporting or remittance purposes.

3. Remittance Of The Admissions Tax On Other Than Monthly Basis

If the accounting method regularly employed by the Vendor in the transaction of his or her business or other conditions are such that reports of sales made on a calendar month basis will impose unnecessary hardship on the Vendor, the City Manager may, upon written request of the Vendor, accept returns at such intervals as will, in the City Manager's opinion, better suit the convenience of the Vendor and will not jeopardize the collection of the tax. The City Manager may permit a Vendor whose monthly tax collected is less than sixty dollars to make returns and pay taxes at intervals greater than one month. The City Manager may require a bond or other financial guarantee to secure payment of the tax on such less frequent basis and may revoke permission to pay the tax on such basis if payment of the tax due becomes delinquent.

4. Consolidation Of Returns

A Vendor doing business in two or more places or locations, whether within or without the City, and collecting taxes hereunder, may file one return covering all such places or locations when accompanied by a supplemental report showing the gross and net taxable sales and the taxes collected thereon for each such place or location.

5. Tax Disputes

Should a dispute arise between the Purchaser and Vendor as to whether or not the sale of Admission is exempt from taxation under this article, the Vendor shall collect and the Purchaser shall pay such tax, and the Vendor shall thereupon issue to the Purchaser a receipt or certificate on forms prescribed by the City Manager, showing the names of the Purchaser and Vendor, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The Purchaser thereafter may apply to the Manager for a refund of such taxes, and it shall be the duty of the City Manager to determine the question of exemption, subject to review by the courts as herein provided.

6. Procedure For Refund Of Tax Paid Under Dispute

A. Any Person who claims that a transaction was not taxable or claims an exemption as provided in this Ordinance may apply for a refund of the tax paid under dispute.

B. An application for a refund of Admissions tax paid under dispute by a Purchaser who claims an exemption shall be made within sixty days after the date of purchase, for which an exemption is claimed. An application for refund of taxes paid in error or by mistake shall be made within three years after the date of transaction for which the refund is claimed. Such applications shall be accompanied by the original paid invoice or sales receipt and shall be made upon forms prescribed and furnished by the City Manager.

C. The burden of proving that any transaction or item is not taxable or is exempt from the tax shall be upon the Person asserting such claim under such reasonable requirements of proof as the City Manager may prescribe.

D. Upon receipt of an application, the City Manager shall examine the same with all due speed and shall give written notice to the applicant of his or her decision thereon.

7. Denial Of Refund

A. An appeal of a denial of a refund shall be submitted in writing to the City Manager within twenty calendar days from the date of the denial of the refund and shall identify the amount of the refund requested and the basis for the appeal.

B. An appeal of a denial of a refund may include a request for a hearing. Hearing procedures shall be as described in Paragraph 13 of this Article.

8. Right Of Refund Not Assignable

The right of any Person to a refund under this Ordinance is not assignable. An application for a refund must be made by the individual who paid the tax, as shown on the sales receipt or invoice.

9. Action For Recovery Of Refund

If any Person obtains any refund unlawfully, the City Manager is empowered and directed to bring appropriate action for recovery of such refund. A conviction for the violation of Paragraph 43 of this Article shall constitute prima facie evidence that all refunds received by such Person pursuant to the application which contained the false statement were obtained unlawfully. Obtaining a refund unlawfully shall be an act of fraud against the City and shall be subject to applicable penalties as outlined in Paragraph 43.

10. Preservation Of Returns And Other Records – Confidentiality

A. Returns shall be preserved for a period of three years from the date of filing with the City Manager, after which time the City Manager may order them destroyed.

B. Except in accordance with a court order or as otherwise provided by law, the City and its agents and employees shall not divulge or make known in any way information obtained from any investigation conducted by the finance department or disclosed in any application, report, return or any other document kept, filed or maintained under the provisions of this Ordinance. The Persons charged with the custody of such applications, reports, returns or other documents shall not be required to produce any of them or evidence of anything contained therein in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of this Ordinance to which the City Manager or the City is a party; or on behalf of any party to any action or proceeding under the provisions of this Ordinance when the report of facts shown thereby is directly involved in such action or proceeding. In either or which events, the court may require the production of so much of the reports or of the facts shown thereby as are pertinent to the action or proceeding.

C. Nothing in this section shall be construed to prohibit the delivery to the taxpayer or authorized representative thereof a copy of any application, report, return or any other document kept, filed or maintained in connection with such Person's tax liability.

D. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and contents thereof, or the inspection of any documents by the City attorney or other official representatives of the City.

11. Records And Accounts To Be Kept

Every Person who is required by this ordinance to collect an Admissions tax shall keep and preserve suitable records of all Admissions sales, made by such Person, and such other books or accounts as may be necessary to determine the amount of tax for the collection or payment of which such Person is liable hereunder. It is the duty of every such Person to keep and preserve all such books, invoices, and other records for a period of three years following the date the taxes were due to the City (see Article VII, Paragraph 2). Such items shall be open for examination in accordance with Paragraph 13 of this Article. If the taxpayer has filed a tax return for any period after the due date for that period, then the records for the period must be preserved for three years after the date the return was filed. If taxpayers have not filed a tax return for any period, then the records must be preserved indefinitely. Failure to preserve all records shall be an act of fraud against the City and shall be subject to applicable penalties as outlined in Paragraph 23 of this Article.

12. Examination Of Returns – Recomputation, Credits, Deficiencies

As soon as practicable after a return is filed, the City Manager shall examine it. If it appears that the correct amount of tax to be remitted may be greater or less than that shown in the return, the tax shall be recomputed by the City Manager. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the taxpayer. If the amount paid is less than the amount due, the amount of the deficiency with a penalty of ten percent of the amount of the deficiency plus interest on both the deficiency and the penalty shall be due and payable in accordance with the procedures set forth in Paragraph 18 of this Article. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added a fraud penalty as set forth in Paragraph 23 of this Article.

13. Investigation Of Records Relating To Taxes – Hearings

A. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any Person, the City Manager may hold investigations, including audits and hearings, concerning any matters covered by this Ordinance, and may examine any relevant books, papers, records or memoranda of any such Person, or any officer or employee of such Person, or of any Person having knowledge of the transactions involved, and may take testimony and evidence as proof of the information. The City Manager shall have the power to administer oaths to such Persons.

B. The City Manager may schedule a hearing, notifying all interested parties by regular mail at least thirty days prior to the date of the hearing. The City Manager is authorized to issue subpoenas as outlined in Paragraph 15 of this Article. Such hearing shall be informal and no transcript, rule of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City Manager shall hold such hearing and issue a final decision thereon within ninety days after the City's notification to the taxpayer, except the City may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any event, the City Manager shall hold such hearing within one hundred eighty days of notifying the taxpayer of the hearing. The decision shall be mailed by regular mail to the taxpayer. If a taxpayer has exhausted City remedies, the taxpayer may dispute the decision of the City Manager in the Douglas County District Court.

14. Subpoenas And Witness Fees

All subpoenas issued under the terms of this Ordinance may be served by any person over the age of eighteen years. The fees of witnesses for attendance in response to a subpoena shall be the same as the fees of witnesses before the Douglas County District Court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the City Manager, such fees shall be paid by the City. When a witness is subpoenaed at the instance of any other party to such

proceeding, the City Manager may require that the cost of service of the subpoena and the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the City Manager, in his or her discretion, may require a deposit to cover the cost of such service and witness fees prior to issuing such subpoenas. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

15. Attendance Of Witness And Production Of Evidence To Be Compelled By Municipal Court Or By District Court

Any judge of the Douglas County District Court or the municipal court of the City, upon the application of the City Manager, may compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the City Manager, by an action for contempt or otherwise in the same manner as though the production of evidence were before such court.

16. Depositions

The City Manager, or any party to an investigation or hearing before the City Manager, may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

17. Audit Of Records

A. For the purpose of ascertaining the correct amount of tax due from any taxpayer required to collect an Admissions tax in the City, the City Manager may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such Person. The City Manager may authorize such an audit at any time the City Manager has reasonable cause to believe that taxes may be due to the City for transactions involving the taxpayer.

B. All of the taxpayer's books, accounts and records shall be open at any time during regular business hours for examination by an authorized agent of the City Manager. If any taxpayer refuses to furnish voluntarily any of the foregoing information when requested by the City Manager or authorized agent, the City Manager or authorized agent, the City Manager may issue a subpoena to require that the taxpayer or the taxpayer's representative attend a hearing or produce any such books, accounts and records for examination.

C. Any tax deficiency or overpayment ascertained through audit shall be computed by one or more of the following methods or any other method as the agent of the City Manager deems appropriate:

- i. By identifying Admissions tax transactions on which the tax was not properly or accurately collected or paid;
- ii. By identifying other irregularities in the calculation of tax due;
- iii. By estimating taxes due based on the results of testing taxpayer's records on a statistical or other reasonable basis.

D. Any charitable organization claiming exemption under the provisions of this Ordinance is subject to audit in the same manner as any other Person engaged in business in the City.

E. The City is authorized to audit taxpayer's records for the thirty-six calendar months preceding the month the taxpayer is notified that an audit is to be conducted. The audit period may be extended by mutual agreement of the City and the taxpayer. The ability to audit this thirty-six month period shall not lapse due to the passage of time once the taxpayer has been notified of the audit period. If the taxpayer failed to file returns, then the City shall have the right to audit periods not filed for an indefinite period of time. If returns are filed late, then the City shall have the right to audit late returns for thirty-six months following the month the return was filed.

F. All taxpayer records shall be made available to the City within a fifty-mile radius of the City. If the taxpayer does not wish to make records available within this area, then the City Manager may elect to assess the taxpayer for all expenses associated with sending auditors to the location selected by the taxpayer and for reasonable expenses, including food and lodging, incurred by the auditors during the period for the audit and until their return to the City. Such liability shall become part of the final audit assessment and shall be treated as an unpaid Admission or other tax.

G. If the taxpayer does not provide files in an organized format; if the auditors must go through taxpayer files, boxes etc., in order to obtain records for audit; or if taxpayer fails to provide information in a timely fashion, the City shall be entitled to charge an hourly fee for time spent organizing, gathering, or in any way assembling taxpayer records for audit. Such fee shall be determined by the City Manager, but in no event shall said fee exceed 2.5 times the auditor's hourly salary.

18. Failure To Make Return – Estimate Of Taxes – Notices – Appeal

A. If any Person fails, neglects or refuses to collect the tax, or to file a return and pay the tax, as required by this Ordinance, or fails, neglects, or refuses to collect, report, or pay any portion of the tax, the City Manager shall make an estimate of the tax due based on available information and shall add thereto a penalty equal to the sum of fifteen dollars or ten percent of the tax due, whichever is greater, and interest on such delinquent taxes at the rate imposed by Paragraph 25 of this Article plus one-half of

one percent per month from the date the return and tax was due, which interest shall not exceed eighteen percent in the aggregate.

B. The City Manager shall serve upon the delinquent taxpayer personally or by first class mail directed to the last address of the taxpayer on file with the City, written notice assessing such estimated taxes, penalty and interest. Such notice shall constitute a notice of determination, assessment and demand for payment, and such assessment shall be due and payable from the taxpayer to the City Manager within twenty days from the date of service of the notice or the date of mailing; provided, however, that within the twenty-day period, such delinquent taxpayer may appeal the notice of assessment.

C. An appeal of a notice of assessment issued to the taxpayer for failure to file a return, underpayment of tax owed, or as a result of an audit shall be submitted in writing to the City Manager within twenty calendar days from the date of the notice of assessment. Any such appeal shall identify the amount of tax disputed and the basis for the appeal.

D. An appeal of a notice of assessment may include a request for a hearing.

E. If a hearing is requested in response to the petition, the City Manager shall notify the petitioner in writing of the time and place of the hearing. The hearing shall be held in accordance with the provision of Paragraph 13 of this Article. After such hearing, or after a consideration of the facts and figures contained in the petition if no hearing is requested, the City Manager shall make such order in the manner he or she deems just and proper and shall furnish a copy of such order to the petitioner.

19. Appeal From Administrative Hearing Decision Of The City Manager

An appeal of a final decision of the City Manager in a hearing held pursuant to Paragraph 13 of this Article shall be commenced within thirty days of such decision.

20. Duties Of Enforcement Officer

A. The tax enforcement officer shall be supervised by the City Manager or his designate.

B. It shall be the duty of the tax enforcement officer to enforce this Ordinance 00-09.

C. The tax enforcement officer shall be deemed a peace officer for the limited purpose of enforcing the provisions delineated in Subparagraph B of this Paragraph and shall have power to issue summons and the complaints for violations of those provisions pursuant to the Colorado Municipal Court Rules of Procedure, Rule 204,

as may be amended. The tax enforcement officer shall also have other duties as outlined in rules and regulations promulgated by the City Manager.

21. Assessment And Recurring Assessment Penalty

If any taxpayer has failed, neglected or refused to pay the tax imposed by this Ordinance within the time specified for payment, the City Manager may assess the following penalties, in addition to the taxes, penalties and interest provided for elsewhere in this Ordinance, the additional amount being imposed to compensate the City for administrative and collection costs incurred in collecting such delinquent taxes:

A. Upon the first or second issuance of a notice of determination, assessment and demand for payment within twelve months, fifteen dollars per notice;

B. Upon the third, fourth or fifth issuance of a notice of determination, assessment and demand for payment within twelve months, twenty-five dollars or fifteen percent of the delinquent taxes, penalties and interest, whichever is greater, per notice;

C. Upon the sixth or more issuance of a notice of determination, assessment and demand for payment within twelve months, fifty dollars or thirty percent of the delinquent taxes, penalties and interest, whichever is greater, per notice.

22. Compliance Penalty

A penalty of one hundred dollars shall be assessed for each section of this Ordinance, which the taxpayer violates. This penalty shall be in addition to any other applicable penalties and interest.

23. Fraud Penalty

In the event that the taxpayer commits an act of fraud upon the City, the City shall be entitled to assess a fraud penalty of one hundred dollars or one hundred percent of the taxes owed, whichever is greater. Such penalty shall be in addition to any other penalties to which the City is entitled under this Ordinance. An additional three percent per month penalty on the amount of fraud penalty shall be added from the date the penalty was due until it is paid.

24. Special Penalty

In the event that the taxpayer is audited and deficiencies are found in the taxpayer's records which result in unpaid taxes owed to the City, the taxpayer shall have six months from the date of the audit assessment in which to correct its records. If the deficiencies are not corrected and result in unpaid taxes due to the City in the future, then the City shall be entitled to assess a special penalty against the taxpayer. Such special penalty shall be assessed from the first day after the last day through which taxpayer's

records were previously audited. The special penalty shall be fifty dollars or fifty percent of the taxes owed, whichever is greater. Such penalty shall be in addition to any other penalties to which the City is entitled under this Ordinance.

25. Rate Of Interest - Method Of Calculation

When interest is required or permitted to be charged under any provision of this Ordinance, the annual rate of interest shall be calculated using the rate established by the state commissioner of banking pursuant to Section 39-21-110.5, C.R.S. For the purpose of calculating the amount of interest due, the date the return and tax was due shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice of assessment and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment.

26. Tax Constitutes Lien

A. The Admissions tax imposed by this Ordinance, along with all penalties and interest pertaining thereto, is a first and prior lien upon the goods, stock-in-trade, and business fixtures in which the Vendor has an ownership interest except for goods that have been purchased in the ordinary course of business by retail purchasers and such lien takes priority over other liens or claims of whatsoever kind or nature on such property.

B. The Admissions tax imposed by this Ordinance, along with all penalties and interest pertaining thereto, is a first and prior lien on the real and personal property of the taxpayer and such lien takes priority.

C. Whenever the business or property of any taxpayer is placed in receivership, bankruptcy, seized under distraint for non-payment of property taxes, or an assignment is made for the benefit of creditors, all taxes, penalties and interest imposed by this Ordinance, and for which the taxpayer is in any way liable under this Ordinance are a prior and preferred claim against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any taxpayer subject to the provisions of this Ordinance under process or order of any court without first ascertaining from the City Manager the amount of any taxes, penalties or interest due and payable under this Ordinance. If there are any such taxes, penalties, or interest due, owing or unpaid, it is the duty of such officer to first pay the amount of the taxes, penalties or interest out of the proceeds of such sale before paying any moneys to judgment creditors or other claimants except that the officer may pay costs of the proceeding and other pre-existing liens or claims taking lawful precedence over the City's claim.

D. In the event that the taxpayer discharges its debts through bankruptcy, dissolution, reorganization, or other means, the City shall be empowered to pursue collection of the unpaid taxes from any officer, agent, trustee, or other official of the taxpayer. The City may collect the taxes due through garnishment, liens, or any other

lawful methods, including but not limited to enforcement actions applicable to the taxpayer.

E. If any tax, penalty or interest imposed by this Ordinance and shown due by returns filed by the taxpayer or by assessments made by the City as provided in this Ordinance is not paid within five days after it is due, the City Manager may issue a notice, setting forth the name of the taxpayer, the amount of the tax penalties and interest, the date of its accrual, and the fact that the City claims a first and prior lien therefor on the real and personal property of the taxpayer. The notice of lien shall be made on forms prescribed by the City Manager and verified by the City Manager and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or personal property or with any Person in possession of any personal property or rights to property belonging to the taxpayer.

F. The City Manager shall release any lien as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, in the same manner as mortgages and judgments are released.

27. Sale Of Business Subject To Lien

A. Any Person who sells a business or closes a business shall complete and file the returns required under this Ordinance; pay the taxes, penalties and interest due within ten days of the date on which such Person sold the business or closed the business; and indicate that it is a final return, that the business is sold or closed, and the name and address of the purchaser of business, if any.

B. The tax imposed by this Ordinance shall be a first and prior lien on the real or personal property, furniture, fixtures, furnishings, equipment, owned or used by a Vendor. This lien shall take priority over all other claims or liens against the property. A purchaser of a business who has acquired the real or personal property, furniture, fixtures, equipment of the business shall withhold sufficient funds from the purchase money to cover the amount of taxes, penalties and interest imposed by this Ordinance due and unpaid until the seller provides a receipt from the City Manager showing that such taxes, penalties and interest have been paid. If taxes, penalties and interest imposed by this Ordinance are due and unpaid after the ten-day period herein provided, such purchaser of the business is personally liable for the payment of the taxes, penalties and interest imposed by this Ordinance due and unpaid to the City to the same extent as the seller of the business.

28. Certificate Of Discharge Of Lien

A. If any real or personal property is subject to a lien for payment of tax due to the City under this Ordinance, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if the City Manager finds that the fair market value of that part of such property remaining subject to the lien is at least

twice the amount of the unsatisfied tax liability plus the value of any liens on the property that have priority over the City 's lien.

B. If any real or personal property is subject to a lien for payment of tax due to the City under this Ordinance, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if the City is paid in partial satisfaction of the tax liability an amount determined by the City Manager to be not less than the value of the City's interest in the part of the property so discharged. In determining the value of the part of the property to be discharged, the City Manager shall consider the fair market value of the property and the value of any liens on the property that have priority over the City 's lien.

C. A certificate of release of lien issued under this section is conclusive evidence that the City 's lien upon the property is extinguished, but does not extinguish or release any portion of the lien on property not specified in the release.

29. Jeopardy Assessment

A. If the City Manager finds that collection of the tax will be jeopardized for any reason, the City Manager may declare the taxable period immediately terminated, determine the tax, and issue a notice of determination, assessment and demand for payment. Notwithstanding any other provision of this Ordinance, the tax shall then be due and payable forthwith, and the City Manager may proceed to collect the tax as provided in Paragraph 30 of this Article.

B. If the taxpayer subject to a jeopardy assessment provides security for payment of the tax satisfactory to the City Manager, the City Manager may forego the jeopardy assessment collection proceedings.

30. Enforcing The Collection Of Taxes Due

A. The City Manager may issue a warrant directed to any employee, agent or representative of the City or any law enforcement officer from the City, commanding such Person to distrain, seize and sell any personal property in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any statute of the state, for the payment of tax due together with interest and penalties thereon and costs of execution for any of the following reasons:

- i. When any deficiency in tax is not paid within twenty days from the date of the notice of determination, assessment and demand for the payment and no hearing or extension has been requested in a timely manner;
- ii. When any deficiency in tax is not paid within thirty days from the date of the notice of determination, assessment and demand for payment and no appeal from such notice

has been docketed in the Municipal or Douglas County District Court during such time, except that if the City Manager finds that collection of the tax will be jeopardized during such period, the City Manager may immediately issue a distraint warrant;

- iii. When any deficiency in tax is not paid within the time prescribed in the judgment and order of court on any appeal to the Douglas County District Court;
- iv. Immediately upon making a jeopardy assessment or issuing a demand for payment upon jeopardy assessment as provided in Paragraph 29 of this Article; or
- v. After or concurrently with the filing of a notice of lien as provided in Paragraph 26 of this Article.

B. The City Manager may apply to a judge of the municipal court for a warrant authorizing the City Manager to search for and seize property located within the City limits for the purpose of enforcing the collection of taxes under this Ordinance. The City Manager may apply to a judge of the Douglas County District Court for a warrant outside the City limits. The judge shall issue such warrant after the City Manager determines that:

- i. The premises to which entry is sought contain property that is subject to levy and sale for taxes due; and
- ii. At least one of the preconditions of Subparagraph i of this Paragraph 30A have been satisfied; but if a jeopardy assessment has been declared under Paragraph 29 of this Article, the City Manager must set forth the reasons that collection of the tax will be jeopardized.

C. The procedures to be followed in issuing and executing a warrant in municipal court pursuant to Subparagraph B of this Paragraph 30 of this Article, shall comply with the Colorado Municipal Court Rules of Procedure, Rule 241(c) and (d).

D. The taxpayer may contest a warrant previously issued under the procedure provided by the Colorado Municipal Court Rules of Procedure, except that no proceeding to contest such warrant may be brought after five days prior to the date fixed for sale of the distrainted property.

E. The agent charged with the search and seizure shall make or cause to be made an account of the items or effects distrainted, and shall leave a copy of such account, signed by the agent making such distraint, with the owner or possessor of the property; or if the owner or possessor of the property is unavailable at the owner's or

possessor's usual place of abode, with some family member over the age of eighteen years; or at the owner's or possessor's usual place of business with a stenographer, bookkeeper or chief clerk; or if the taxpayer is a corporation, with any officer, manager, general agent, or agent for process; with a statement of the sum demanded and time and place of sale. The agent charged with collection shall forthwith cause to be published a notice of the time and place of sale and a description of the property to be sold in a newspaper within the county wherein distraint is made or, in lieu thereof and in the discretion of the City Manager, the agent or sheriff shall cause such notice to be publicly posted at the county courthouse wherein such distraint is made and copies thereof shall be posted in at least two other public places within the county. The time fixed for the sale shall not be less than ten days nor more than sixty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned or postponed from time to time by the agent or sheriff, if the agent or sheriff deems it advisable, to a date certain but not for a time to exceed in all ninety days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price that includes the expenses of making the seizure and of advertising the sale. If the amount bid for the property at the sale does not equal the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased for the City. The property so purchased may then be sold by the agent or sheriff under such regulations as may be prescribed for disposing of City property. The chattels or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid together with the expenses, fees and other charges, or they may be redeemed by any Person holding a chattel mortgage or other evidence of right of possession.

F. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate is prima facie evidence of the right of the agent or sheriff to make such sale and conclusive evidence of the regularity of the proceedings in making the sale. The certificate transfers to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold. Where such property consists of certificates, securities, or other evidence of indebtedness in the possession of the agent or sheriff, the taxpayer shall endorse such certificates to the purchaser thereof and supply the purchaser with proof of the taxpayer's authority to transfer the same or with any other requisite that may be necessary to obtain registration of the transfer of the certificate. Any surplus remaining above, following payment of the City's taxes, penalties, interest, costs and expenses of making the seizure and of advertising the sale; and then after any amounts distributed pro rata to other jurisdictions under recorded sales, ad valorem, or other tax liens, shall be returned to the property owner or such Person having a legal right to the property; and, on demand, the City Manager shall render an account in writing of the sale.

G. In any case where a taxpayer has refused or neglected to pay any tax due to the City under this Ordinance and a lien has been filed as provided in Paragraph 26 of this Article, the City Manager may, in addition to pursuing other collection remedies, certify the amount of the tax, penalties and interest due, together

with appropriate amount for costs of county collection, to the county treasurer to be levied against the Person's property for a collection by the county in the same manner as delinquent general taxes upon such property are collected. Before certifying such amounts to the county for collection, the City Manager shall provide to the property owner an opportunity for a hearing to contest the authority of the City to impose the tax, or the amount thereof. The City Manager shall mail the notice to the property owner by first class mail addressed to the last known owner of the property on the records of the county assessor. If the City Manager's decision after a hearing affirms the imposition of charges, the decision shall include notice that the charges are due and payable within ten days of the date of the decision and that, if not paid when due, they will be certified to the county treasurer for collection, along with an appropriate amount for the cost of county collection. Whenever the City Manager certifies any such amounts to the county treasurer for collection, the City Manager shall record notice of such certification with the county clerk and recorder.

31. Recovery Of Unpaid Tax By Action At Law

A. In addition to other remedies provided in this Ordinance, the City Manager may treat any such taxes, penalties or interest due and unpaid as a debt due to the City from the taxpayer. If a taxpayer fails to pay the tax, or any portion thereof, or any penalty or interest thereon, when due, the City Manager may recover at law the amount of such taxes, penalties, and interest in municipal court or in any county or district court wherein the taxpayer resides or has a principal place of business, that has jurisdiction over the amounts sought to be collected. The return filed by the taxpayer or the notice of determination, assessment and demand for payment issued by the City Manager is prima facie proof of the amount due.

B. The City Attorney is hereby authorized upon request by the City Manager to commence any legal action or suit for the recovery of the tax due under this Ordinance. The taxpayer shall be responsible for all costs including but not limited to attorneys fees, incurred by the City in any such action.

C. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings no bonds shall be required of the City, nor shall any sheriff require of the City Manager an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The City may also prosecute appeals or writs of error in such cases without the necessity of providing bond therefor.

D. In any case in which a taxpayer has refused or neglected to pay any tax, penalty or interest due to the City under this Ordinance and a lien has been filed upon any real or personal property, the City Manager may cause a civil action to be filed in the county district court or municipal court in which is situated any such property subject to such lien to enforce the lien and subject any real or personal property or any right, title or interest in such property to the payment of the amount due. The court shall decree a sale for such real property and distribute the proceeds of such sale according to the court's

findings concerning the interest of the parties and of the City. The proceedings with regard to the redemption of property from such sale, and the execution of any deed of conveyance shall be in accordance with the law of foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the property involved in such action if equity so requires.

32. City May Be Party In Title Actions

In any action affecting the title to real property or the ownership or right to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein.

33. Injunctive Relief

The City Manager may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this Ordinance.

34. Waiver Of Penalties, Interest, And Fees By City Manager

The City Manager is authorized to waive, for good cause shown, any penalty, interest or fee imposed under this Ordinance.

35. Obligations Of Fiduciaries And Others

A. For the purpose of facilitating settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and the assets of corporations in the process of dissolution or that have been dissolved, the City Manager may agree with the fiduciary or surviving corporate directors upon an amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for any of the periods of tax liability under this Ordinance. Payment in accordance with such agreement fully satisfies the tax liability for the periods that the agreement covers, unless the taxpayer has committed fraud or misrepresented a material fact regarding the tax or liability therefor.

B. Except as provided in Subparagraph D of this Paragraph 35, any personal representative of a decedent or the estate of a decedent, any trustee, receiver or other Person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or that has been dissolved, who distributes the estate or fund under such Person's control without having first paid any taxes covered by this Ordinance due from such decedent, decedent's estate, trust estate, receivership or corporation and that may be assessed within the periods authorized by this Ordinance is personally liable to the extent of the property distributed by such Person for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation imposed by or due under this Ordinance and assessed within the periods authorized by this Ordinance.

C. The distributor of a decedent's estate, a trust estate, or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation is personally liable under this Ordinance to the same extent that the decedent, trust estate, fund or corporation is liable under this Ordinance.

D. If a tax under this Ordinance is due from a decedent or the decedent's estate, the personal liability of the Persons enumerated in Paragraph 35 shall remain in effect only if a determination of the tax due is made and notice and demand therefor issues within eighteen months after the decedent's personal representative files with the City Manager a written request for such determination, which request shall be filed after he or she has filed the decedent's final return or the decedent's estate's return to which the request applies. A request for determination under this paragraph does not extend the otherwise applicable period of limitation.

E. If a tax under this Ordinance is due from a corporation that is in the process of dissolution or has been dissolved, the personal liability of directors or stockholders as provided in this Paragraph 35 shall remain in effect only if a determination of the tax due is made, and notice and demand issued within eighteen months after the corporation files with the City Manager a written request for such determination, which request shall be filed after it has filed the corporation's return, but only if the request states that the dissolution was begun in good faith before the expiration of the eighteen-month period and the dissolution is completed. A request for determination under this Paragraph 35 does not extend the otherwise applicable period of limitation.

36. Review Of Decisions Of City Manager

In the event the taxpayer has exhausted all local remedies, the taxpayer may apply for a review of the decision of the City Manager in the Douglas County District Court.

37. Review Bond Required

Within twenty days after making application to the district court for review of the decision of the City Manager, the party making such application shall file with the district court a surety bond in twice the amount of the taxes, penalties, interest and other charges stated in the final decision by the City Manager which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of C.R.S. 11-35-101(1), equal to twice the amount of the taxes, penalties, interest and other charges stated in the final decision by the City Manager. The taxpayer may, at his or her option, deposit the disputed amount with the City Manager in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the contested amount during the pendency of the action. At the conclusion of the action, after appeal or after the time for such appeal has expired, the funds deposited shall be, at the direction of the

court, either retained by the City Manager and applied against the amount due or returned in whole or in part with interest due to the taxpayer from the date it was paid to the City Manager. No claim for refund of amounts deposited with the City Manager need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.

38. Notices

All written notices required to be given to any taxpayer under the provisions of this Ordinance shall be hand delivered or mailed by first class mail, postage prepaid, addressed to such taxpayer at the last known address of the taxpayer on file with the City.

39. Tax In Addition To All Other Taxes

The tax imposed by this Ordinance shall be in addition to all other taxes imposed by law, except as herein otherwise provided.

40. Hearings To Be Held In City

Every hearing before the City Manager shall be held in the City.

41. Administration By City Manager-Rules And Regulations

The administration of all provisions of this Ordinance is vested in and shall be exercised by the City Manager who shall prescribe forms and formulate and promulgate reasonable rules and regulations in conformity with this Ordinance for the making of returns, for the ascertainment, assessment and collection of taxes imposed and for the proper administration and enforcement thereof.

42. Authority To Compromise Taxes

The City Manager shall have the authority to compromise or enter into a payment plan with respect to any liability for taxes where the total amount of the liability does not exceed ten thousand dollars. Where the total amount of the liability is in excess of ten thousand dollars, any compromise or payment plan must be approved by the City Council upon the recommendation of the City Manager. In any action involving the City Council, the taxpayer expressly waives its right to confidentiality as outlined in Article VII, Paragraph 10.

43. Violations And Fines

A. It is unlawful for any taxpayer to fail to collect or for any Purchaser or user to fail to pay any tax, penalty or interest levied by this Ordinance regardless of whether the tax liability is disputed or an exemption is claimed.

B. It is unlawful for any taxpayer to retain any tax collected in excess of the rate stated in Article V or to fail to remit punctually to the City Manager the full amount required by the provisions of this Ordinance, including taxes, penalties and interest.

C. It is unlawful for any Person to fail or refuse to make or file any return required to be made or filed by this Ordinance or to make any false or fraudulent return or any false or fraudulent statement in any return.

D. It is unlawful for any applicant for a tax refund to make a false statement in connection with such application.

E. It is unlawful for any Person other than the City or its designated collection agent to become enriched or to gain any benefit from the collection or payment of the taxes levied by this Ordinance.

F. It is unlawful for any Person to aid or abet another in any attempt to evade the payment of the tax imposed by this Ordinance.

G. It is unlawful for any Person to violate any other provisions of the Ordinance.

H. A criminal action may be brought against any Person, officer, employee, agent, or other representative who violates any of the provisions of this Ordinance. Each day that this Ordinance is violated and/or each action violated shall constitute a separate violation.

44. Limitations On Actions To Collect

A. Except as otherwise provided in this Article VII, Paragraph 44, no assessment shall be made nor shall any notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for collection be instituted, or any other action to collect the same be commenced, more than three years after the date on which the tax was due and payable. In addition, no lien shall continue after such period, except for taxes assessed before the expiration of such period, when a notice of lien regarding such taxes was filed prior to the expiration of such period, in which case the lien shall continue for only one year after the filing of notice thereof. Liens which expire may be renewed indefinitely until amounts are paid.

B. In the case of a false return, fraudulent act, or failure to file a return, the tax together with interest and penalties, may be assessed or proceedings for the collection of such taxes may be commenced at any time.

C. Before the expiration of such period of limitation, the taxpayer and the City Manager may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing made before the expiration of

the previously agreed upon extension. In the event that the taxpayer refuses to extend the period of limitation, the City Manager may extend the period of limitation upon holding a hearing and finding good cause for the extension as a result of delays caused by the taxpayer.

D. Nothing in this section shall be construed to limit any right accrued or to revive any liability barred by any statute in effect on the effective date of the ordinance from which this Ordinance was derived.

45. Claims For Recovery

The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer to correctly pay, collect, and remit Admission taxes to the City.

A. As used herein, “claim for recovery” means a claim for reimbursement of Admissions taxes paid to the wrong taxing jurisdiction.

B. When it is determined by the City Manager of the City that Admissions tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the Taxpayer that taxes are being improperly collected and remitted, and that as of the date of the notice the Taxpayer must cease improper tax collections and remittances.

C. The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedure for collection of the tax from the taxpayer. The decision to make a claim for a recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer, releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

D. Within ninety days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty days of approval. If a claim is submitted jointly by a municipality and a Vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

E. The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.

F. The period subject to a claim for recovery shall be limited to the thirty-six month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

ARTICLE VIII. - SEVERABILITY

If any provision of this Ordinance or the application thereof to any Person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

INTRODUCED, READ AND ORDERED PUBLISHED NOVEMBER 21, 2000.

PUBLISHED IN THE DOUGLAS COUNTY NEWS-PRESS ON NOVEMBER 29, 2000, DECEMBER 6, 2000 AND JANUARY 10, 2001.

PASSED, ADOPTED AND APPROVED ON DECEMBER 19, 2000, TO BE EFFECTIVE ON FEBRUARY 1, 2001.

CITY OF LONE TREE

John R. O'Boyle, Jr., Mayor

ATTEST:

Jack W.L. Hidahl, City Clerk