Benton

Advertising & Promotion Commission

RULES AND REGULATIONS FOR THE

ENFORCEMENT OF

BENTON ORDINANCE NUMBER 46 OF 2005

“THE ADVERTISING AND PROMOTION

COMMISSION ORDINANCE”

REVISED JUNE 2018

**Section 1. Definitions.**

The following words and phrases, except where the context clearly indicates the application of a different meaning, when used in these rules and regulations shall have the following meanings:

1. “Accounting Firm” means firm hired by A&P for the financial accounting.
2. “Administrator” means the person or persons responsible for all day-to-day activities of the A&P Commission.
3. “A&P Tax” means the gross receipts tax levied by the City pursuant to the Advertising and Promotion Commission Act Ordinance No. 46 of 2005 and Ark. Code Ann. § 26-75-602.
4. “A&P Tax Permit” means the document required to conduct the business of either selling prepared foods or the business of providing motel or hotel lodging as defined in Ark. Code Ann. § 26-75-602.
5. “Assessment” means a tax is assessed when it is recorded as the liability of a taxpayer on the Commission’s records. The assessment becomes a final assessment following the decision of the Commission or a hearing officer, if the assessment is protested.
6. “Business Entity” means a corporation, association, partnership, joint venture, limited liability company, limited liability partnership, trust or other legal business entity.
7. “Commission” means the City of Benton Advertising and Promotion Commission and any representatives designated by the Commission to perform any function hereunder.
8. “City” means the City of Benton, Arkansas.
9. “City Attorney” means the elected City Attorney for Benton, Arkansas.
10. “Collector” means person hired by A&P to handle pursuit of any delinquent tax.
11. “Delinquency date” means the A&P Tax is delinquent on the first day of the month following the month it was due. It is subject to penalty on the second day of the month following the month it was due.
12. “Due date” means the A&P Tax is due no later than the last day of the month following the month the tax is imposed on gross receipts.
13. “Ordinance” means the City of Benton Advertising and Promotion Commission Ordinance No. 46 of 2005.
14. “Person” means any natural person, firm, corporation or other business entity.
15. “Taxpayer” means any person liable to remit A&P Tax.
16. “Tax Collections Employee” means city employee responsible for receipting and depositing of A&P Tax Collections.

**Section 2. Rules and Regulations Administering the A&P Tax Permit.**

The following rules and regulations are hereby established to assist in the establishment and implementation of the A&P Tax Permitting system as well as the revocation and suspension thereof.

1. A&P Tax Permit Application: The Administrator shall issue an A&P Tax Permit Application for those individuals who seek the issuance of an A&P Tax Permit, in substantially the form as attached hereto as “Attachment No. 1.”
2. A&P Tax Permit: The form of the A&P Tax Permit attached hereto as “Attachment No. 2” is hereby approved and adopted. After an individual has filed an application and has obtained a city privilege license, and A&P Tax permit number shall be assigned by the Administrator or the Administrator’s assignee. An A&P Tax Permit shall be issued to said individual by the Administrator when provided the number by tax collector. The Commission specifically authorizes the office the Administrator to issue A&P Tax Permits.
3. Discontinuance, Revocation, Suspension, and Renewal: The Administrator, Tax Collections Employee of the City, and Collector shall be responsible for the implementation of the following:
4. The Administrator, in coordination with the Benton City Clerk’s Office, shall maintain a comprehensive list of all businesses subject to the A&P taxes that have discontinued their business and who have failed to remit their A&P Tax Permit.
5. The Collector, in coordination with the Benton City Clerk’s Office shall maintain a list of all persons to whom an A&P Tax Permit has been issued who fail to comply with any provision of the Ordinance and any rule or regulation prescribed by the Commission for the enforcement of the Ordinance. After the Collector has discovered any such violation, the Collector shall notify the Commission who shall then issue a Notice of Intent to Revoke A&P Tax Permit. Said Notice of Intent to Revoke A&P Tax Permit shall be served via mail with required return receipt requested. After the Commission votes to revoke an A&P Tax Permit, the collector shall issue a Notification of Revocation in substantially the form as that attached hereto as “Attachment No. 4.” A vote to revoke an A&P Tax Permit shall be held by the Commission at the completion of requested hearing or after the ten (10) day time frame in which a person may request such a hearing has expired.
6. Once an A&P Tax Permit has been revoked, the City Attorney may institute proceedings to obtain an injunction in the Saline County Circuit Court to close the business as authorized by Ark. Code Ann. § 26-72-602 and Ark. Code Ann. § 26-18-702.

**Section 3. Rules and Regulations for Enforcing the Collection of A&P Tax.**

The following rules and regulations are hereby established to assist in enforcement and collection of A&P Taxes when a taxpayer has failed to file an A&P tax return or when a taxpayer has underpaid any A&P Tax.

1. A&P Tax Return Forms: The Administrator, in coordination with the A&P Commission, shall make and provide initial template A&P Tax Return Forms as a part of the packet of information supplied to applicants. Said Tax Returns Forms shall be substantially in the form attached hereto as “Attachment No. 5.” These tax return forms shall clearly explain a two percent (2%) discount and a five percent (5%) per month delinquency penalty up to thirty-five percent (35%) in the aggregate.
2. Collection Procedures: The Administrator shall follow the following procedures in collecting the tax when no return is filed or if a return is filed with insufficient payment of the tax:
3. First notice served to delinquent account no later than the 10th day of the month following the month is was due. First notice includes:
4. Past Due Letter
5. Gross Receipts Form

At this time, the name of delinquent accounts in this status will have its business name published in *The Saline Courier* and also on social media. Also, if a delinquent account has an alcohol permit from the Department of Finance & Administration—Alcoholic Beverage and Control Board (ABC), the ABC will be notified of its delinquent status.

1. Second notice served to delinquent accounts no later than the 10th day of the month following the month of the first notice. Second notice includes:
   1. Notice of Intent to Revoke A&P Tax Permit
   2. Notice of Proposed Assessment (average of previous 3 months)

After 10 days, send:

Notice of Hearing

If hearing is held

Hearing Officer Finding

Final Notice of Intent to Revoke A&P Tax Permit

Note: Commission votes to revoke permit

1. Third notice served to delinquent accounts no later than the 10th day of the month following the month of the second notice. Third notice includes:
   1. Notice of Revocation
   2. Hearing Officer Finding, if any
   3. Notice of Final Assessment and Demand for Payment

Note: Commission votes to issue Certificate of Indebtedness

1. Fourth and Final Notice served to delinquent accounts no later than the 10th day of the month following the third notice. Fourth Notice includes:
   1. Certificate of Indebtedness

All notifications shall be sent by regular US Mail or certified US Mail, return receipt requested, at the discretion of the City Finance Director. Those under $10.00 will be sent by regular mail; those above $10.00 will be sent by certified US Mail.

1. Failure to File A&P Tax Return or Filing of Insufficient Return: When it has come to the attention of the Commission and Collector that no return has been filed and/or it is determined that there is an A&P Tax due for the taxable period which is unpaid, or when a return has been filed and it is determined that the A&P Tax disclosed by the return is less than the tax disclosed by an examination, the following steps shall be taken:
   * + 1. The Collector shall determine a proposed assessment. If exact amount due is not known, an average of the past three months of taxable A&P income shall be used to determine the assessment. In the event the Taxpayer does not have a taxable income history, the Collector may determine an industry average based upon like businesses who operate in Benton. After the Collector has determined a proposed assessment, the Collector shall give a Notice of Proposed Assessment to the Taxpayer by serving the Taxpayer via mail with return receipt requested. Said Notice of Proposed Assessment shall be drafted by the Collector in substantially the same form as that attached hereto as “Attachment No. 6.” Said Notice shall clearly state that the Taxpayer has the right to a hearing after a written notarized protest has been filed by the Taxpayer.
       2. If a written protest has been filed with the Commission, the Advertising and Promotion Chairman, or his designee, shall serve as the Hearing Officer. The Hearing Officer shall set the time and place of the hearing which shall be served upon the Taxpayer by first-class mail, postage prepaid. The Hearing Notice shall be drafted by the Collector in substantially the same form as that attached hereto as “Attachment No. 7.” The Hearing Notice shall state the time and place of the hearing and shall state that the Taxpayer may be represented by an authorized representative and my present evidence in support of his position at the hearing. At the completion of the hearing, the Hearing Officer shall notify both the Commission and the Taxpayer by letter of his/her findings, which shall be known as the Hearing Officer’s Findings. The Hearing Officer’s Findings shall be prepared in substantially the same form as that attached hereto as “Attachment No. 8.” If the Hearing Officer finds that the proposed assessment has been sustained, in whole or in part, the letter shall notify the Taxpayer, by first-class mail, postage prepaid, that he has the option to request that the Commission revise the decision of the Hearing Officer by making his request in writing within 20 days of the mailing of the Hearing Officer’s decision.
       3. If the Commission refuses to make a revision or if the Taxpayer does not make a request for revision, then a Notice of Final Assessment and Demand for Payment shall be made upon the final determination of the Hearing Officer or the Commission. Said Notice of Final Assessment and Demand for Payment shall be drafted by the Collector is substantially the same form as that attached hereto as “Attachment No. 9.” Said Notice shall be served by first-class mail, postage prepaid. The Notice shall clearly state that the Taxpayer has the right to seek judicial relief pursuant to Ark. Code Ann. § 26-75-603(d).
       4. If a Taxpayer does not timely and properly pursue his remedies seeking relief from the decision of the Commission or Hearing Officer a Notice of Final Assessment and Demand for Payment has been made against the Taxpayer, or if the Taxpayer fails to pay the deficiency assessed upon Notice and Demand, then the Commission at the next Commission meeting shall, through the City Attorney, issue to the Circuit Clerk of Saline County a Certificate of Indebtedness certifying that the person named therein is indebted to the Commission for the amount of the tax established by the Commission as due. The Certificate of Indebtedness shall be prepared by the Collector in substantially the same form as that attached hereto as “Attachment No. 10.” If a Taxpayer has a delinquent A&P Tax liability to the Commission of less than one thousand dollars ($1,000.00), the Commission, the City Attorney, or the Hearing Officer may enter into an agreement with the Taxpayer to allow the Taxpayer to pay the delinquency in installments. The Commission, the City Attorney, or the Hearing Officer may choose not to issue a Certificate of Indebtedness during the period of the installment agreement if he determines that it is in the best interest of the Commission.
       5. The City Attorney may pursue collection of the Certificate of Indebtedness as any other judgment.

**Section 4. Penalties and Tax.**

If a Taxpayer either fails to file a return, fails to remit full payment or fails to correct a non-compliant return, the following penalties shall be invoked by the Administrator:

1. Assess a fifty-dollar ($50.00) penalty for each return which is not filed within thirty (30) days of notification under Section 3(b)(1).
2. Assess a fifty-dollar ($50.00) penalty for each return which is not corrected within thirty (30) days of notice of the return being non-compliant.
3. In the case of a Taxpayer’s failure to remit the full amount of tax when due, there shall be added to the tax which is due an additional five percent (5%) of the amount due if the tax is not paid within thirty (30) days of the due date, with an additional five percent (5%) for each month or a fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate.

**Section 5. Miscellaneous.**

The following rules and regulations are hereby established to assist in the implementation of the Ordinance:

1. If any settlement or compromise of liability is agreed to, or if any installment payment plan is agreed to, the Collector in conjunction with the tax collections employee of the City shall establish a record system for keeping said agreements.
2. Because the Commission might find it necessary for the Commission to use the services of a court reporter in order to fully implement the Ordinance, the City Attorney shall maintain a list of court reporters used by the Commission when implementing the Ordinance.

**Section 6. Amendment to these Rules and Regulations; copies.**

These Rules and Regulations are hereby established to assist in the implementation of the Ordinance and may be amended from time to time by the Commission. Upon the adoption hereof, or any amendments hereto, the Administrator shall provide a copy to the City Clerk and shall maintain copies at the offices of the Commission.

APPROVED THIS \_\_\_\_\_ DAY OF JUNE 2018.

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Chairman

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Secretary