

CITY OF BEAVERCREEK, OHIO

CODIFIED ORDINANCE

§ 35.56 HOTEL/MOTEL/SHORT TERM RENTAL TAX.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DIRECTOR OF FINANCE. The Director of Finance of the City of Beaver Creek, Ohio.

HOTEL or MOTEL. Every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one (1) or several structures.

OCCUPANCY. The use or possession or the right to the use or possession of any room or rooms or space or portion thereof in any hotel/motel/short term rental for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

OPERATOR. The person who is the proprietor of the hotel/motel/short term rental, whether in the capacity of owner, lessee, licensee, mortgagee in possession, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall be deemed an operator for the purposes of this chapter, and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

PERMANENT OCCUPANTS. Any persons who reside in a dwelling more than 51% of a calendar year, and the dwelling in which the persons resides shall be referred to as their primary residence.

PERSON. Any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

RENT. The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

SHORT-TERM RENTAL. Any dwelling that is rented wholly or partly for a fee for less than thirty (30) consecutive days by persons other than permanent occupants from which permanent occupants or short term rental hosts received monetary compensation.

SHORT-TERM RENTAL GUESTS. Any persons renting temporary lodging from a short-term rental host, or through a hosting platform on behalf of the short-term rental host, for less than thirty (30) consecutive days.

SHORT TERM RENTAL HOST. The owner(s) or permanent occupant(s) of a short term rental who offer the short term rental for temporary lodging.

TRANSIENT ACCOMMODATIONS. Every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests in which four (4) or less rooms are used for the accommodation of such guests, whether such rooms are in one (1) or several structures.

TRANSIENT GUESTS. Persons occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.

VENDOR. The owner or operator of the hotel or transient accommodations or hosting platform or short-term rental host

(B) Levy of 3% tax for transient guests.

(1) For the purpose of providing revenue with which to meet the needs of the city, for the use of the general fund of the city, there is levied a tax of 3% on all transactions by which lodging by a hotel/motel or transient accommodations, including short term rentals, is or is to be furnished to transient guests or short term rental guests.

(2) The tax constitutes a debt owed by the transient guest to the city. That debt may be extinguished only by payment to the operator as trustee for the city or by payment to the city.

(3) The transient guest shall pay the tax to the operator of the hotel/motel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due from each transient guest at the time such guest ceases to occupy space in the hotel/motel. If for any reason the tax due is not paid to the operator of the hotel or motel, the Director of Finance may require that such tax shall be paid directly to the Director of Finance.

(4) The taxes imposed by this chapter shall be paid by the transient guest or short term rental guest to the vendor, and each vendor shall collect from the transient or short term rental guest the full and exact amount of the tax payable on each taxable lodging. (A) Should the hosting platform collect the full and exact amount of the tax payable for each separate transaction, the short term rental host shall be relieved of the requirement of this section. (B) If the transaction is claimed to be exempt, the transient guest or short term rental guest must furnish to the vendor, and the vendor must obtain from the transient guest or short term guest, written proof of exempt status. (C) If no proof of exemption is obtained, it shall be presumed the tax applies.

(5) The tax imposed on any short term rental guest shall be paid by the short term rental guest to either: (A) the hosting platform that facilitates booking services for short term rental accommodations between a short term rental host and the short term rental guest(s), or (2) the

short term rental host that offers accommodations without the use of a hosting platform or (B) uses a hosting platform that does not collect short term rental taxes from a short term rental guest.

(C) Exemptions,

(1) No tax shall be imposed under this section:

(a) Upon rents not within the taxing power of the city under the constitution or laws of the state or the United States;

(b) Upon rents paid by the state or any of its political subdivisions.

(2) No exemptions claimed under this division (C) of this section shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Director of Finance. All claims of exemption shall be made in the manner prescribed by the Director of Finance.

(D) Prohibition against false evidence of tax-exempt status.

(1) No transient guest shall refuse to pay the full and exact tax as required by this section or present to the operator false evidence indicating that the lodging as furnished is not subject to the tax.

(2) If the transaction is claimed to be exempt, the transient guest must furnish to the operator, and the operator must obtain from the transient guest, a certificate specifying the reason that the sale is not legally subject to the tax. If no certificate is obtained, it shall be presumed the tax applies.

(E) Tax to be separately stated and charged,

(1) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof at the time when the occupancy is arranged or contracted and charged for. Such tax shall also be stated separately upon every evidence of occupancy or any bill or statement or charge made for the occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustee for and on account of the city, and the operator shall be liable to the city for the collection thereof and for the tax.

(2) No operator of a hotel/motel/short term rental shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

(F) Registration. Within thirty (30) days of commencing business, each operator of any hotel/motel/short term rental renting lodging to transient guests shall register the hotel/motel/short term rental with the Director of Finance and obtain from her/him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel or motel;
- (3) The date upon which the certificate was issued;

(4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the hotel/motel/short term rental tax ordinance by registering with the Director of Finance for the purpose of collecting from transient guests the hotel-motel/short term rental tax and remitting the tax to the Director of Finance. This certificate does not constitute a permit."

(G) Records, inspection, destruction. Each operator shall keep complete and accurate records of lodging furnished and of the tax collected thereon, which shall be the amount due under this section, and shall keep all invoices and such other pertinent documents. If the operator furnished lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was not exempted by reason of such identity, or shall show the nature of the transaction if exempted for any other reason. Such records and other documents shall be open during business hours for inspection by the Director of Finance, or his agents, and shall be preserved for a period of four years, unless the Director of Finance, in writing, consents to their destruction within that period, or unless the four-year period is extended by any orders requesting that such records be kept for a longer period of time.

(H) Reporting and remitting.

(1) On or before the last day of each month each operator shall make and file a return for the preceding month on forms prescribed by the Director of Finance. Such returns shall show the receipts from furnishing lodging, the amount of tax due from the operator to the city for the period covered by the return, and such other information as the Director of Finance deems necessary for the proper administration of this chapter. The Director of Finance may extend the time for making and filing returns. Returns shall be filed by delivering or mailing the same to the Director of Finance together with payment of the full amount of tax shown to be due thereon.

(2) The Director of Finance may authorize operators whose tax liability is not such as to merit monthly returns, as determined by the Director of Finance upon the basis of administrative costs of the city, to make and file returns at less frequent intervals. Such authorization shall be in writing, shall indicate the intervals at which returns are to be filed, and may be revoked by the Finance Director upon 30 days notice.

(3) All claims for exemptions from tax filed by transient guests with the operator during the reporting period shall be filed with the return.

(4) All returns and payments submitted by each operator shall be treated as confidential by the Director of Finance and shall not be released by him except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of Ohio, the County of Greene, or the City of Beavercreek for official use only.

(5) If for any reason the hotel/motel or short term rental cease doing business in the city, all returns and payments are due immediately upon cessation of business.

(6) All taxes collected by operators pursuant to this section shall be held in trust for the account of the city until payment thereof is made to the Director of Finance.

(7) The Director of Finance, if he/she deems it necessary in order to insure the payment of the tax imposed by this section, may require returns and payments to be made for other than monthly periods. The returns shall be signed by the operator or his authorized agent.

(I) Penalties and interest.

(1) Original delinquency. Any operator who fails to remit any tax imposed by this section within the time required shall pay a penalty equal to 10% of the amount of the tax, in addition to the tax.

(2) Continued delinquency. Any operator who fails to remit any delinquent remittances on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty equal to 10% of the amount of the tax and previous penalty in addition to the tax and the 10% penalty first imposed. An additional penalty equal to 10% of the total tax and penalty of the previous 30 day period shall be added for each successive 30-day period the account remains delinquent.

(3) Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this section is due to fraud, a penalty equal to 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (1) and (2) of this division (I).

(4) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this section shall pay interest at the rate of one-half of one percent per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(5) Penalties during pendency of hearing or appeal. No penalty provided under the terms of this section shall be imposed during the pendency of any hearing provided for herein nor during the pendency of any appeal to the City Manager provided for herein.

(J) Failure to collect and report tax, determination of tax by Director of Finance.

(1) If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this section, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due.

(2) As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this section and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he/she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this section. In case such determination is made, the Director of

Finance shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of business.

(3) Such operator may within ten days after the serving or mailing of such notice make application in writing to the Director of Finance for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Director of Finance shall become final and conclusive and immediately due and payable.

(4) If such application is made, the Director of Finance shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be fixed.

(5) After such hearing, the Director of Finance shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in division (K) of this section.

(K) Appeal. Any operator aggrieved by any decision of the Director of Finance with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Manager by filing a notice of appeal with him within 15 days of the serving or mailing of the determination of tax due. The City Manager shall fix a time and place for hearing such appeal, and shall give notice in writing to such operator at his last known place of business. The findings of the City Manager shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(L) Actions to collect. Any tax required to be paid by a transient guest under the provisions of this section shall be deemed a debt owed by the transient guest to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this section shall be liable to an action brought in the name of the city for the recovery of such amount.

(M) Violations. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the third degree and shall be fined not more than \$500 or imprisoned not more than 60 days, or both.

(N) Refunds.

(1) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this section, it may be refunded as provided in subsections (2) and (3) of this division (N), provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim

is founded, is filed with the Director of Finance within three years of the date of payment. The claim shall be on forms furnished by the Director of Finance.

(2) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Director of Finance that the person from whom the tax has been collected was not a transient guest; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient guest or credited to rent subsequently payable by the transient to the operator.

(3) A transient guest may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing of a claim in the manner provided in subsection (1) of this division (N), but only when the tax was paid by the transient guest directly to the Director of Finance, or when the transient guest having paid the tax to the operator, establishes to the satisfaction of the Director of Finance that the transient guest has been unable to obtain a refund from the operator who collected the tax.

(4) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

(O) Moneys received, where credited. The moneys received under the provisions of this section shall be credited to the general fund of the city.

(Admin. code, Ch. 195; Ord. 84-39, passed 6-25-84);

Amended Code: (Admin. Code Ch. 195; Ord. 23-16, passed 6-12-23)