

ORDINANCE NO. 12-07

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Susan Lienesch ON THE 17th DAY OF September, 2007.

AN ORDINANCE ENACTING A HOTEL-MOTEL TAX FOR PROPERTY LOCATED IN GREENE COUNTY, OHIO.

WHEREAS, revenue from a hotel-motel tax will provide revenue for the general fund which meets the needs of the City; and

WHEREAS, the Council of the City of Centerville, Ohio finds it in the best interests of the City to have such a tax for properties located in Greene County;

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1: The Centerville Municipal Code is hereby amended by the adoption of Chapter 870, Hotel-Motel Tax which shall contain the following sections:

CHAPTER 870: HOTEL-MOTEL TAX

§ 870.01 DEFINITIONS.

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except if the context clearly indicates or requires a different meaning:

- (a) "Director of Finance" means the Director of Finance of the City of Centerville, Ohio.
- (b) "Hotel" or "Motel" means every Greene County 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 or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.
- (c) "Occupancy" means the use or possession or the right to use or possession of any room or rooms or space or portion thereof in any

hotel or motel 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.

- (d) "Person" means 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.
- (e) "Rent" means 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 occupancy is liable for the occupancy without any deduction therefore whatsoever.
- (f) "Transient Guests" mean persons occupying a room or rooms for sleeping accommodations for less than 30 consecutive days.

§ 870.02 LEVY OF THREE PERCENT TAX FOR TRANSIENT GUESTS.

(a) For the purpose of providing revenue with which to meet the needs of the City of Centerville, Ohio, for the use of the general fund of the city, there is hereby levied a tax of three percent on all rents received by a hotel or motel for lodging furnished to transient guests.

(b) The tax constitutes a debt owed by the transient guest to the City of Centerville. Such debt may be extinguished only by payment to the operator as trustee for the city or by payment to the city.

(c) The transient guest shall pay the tax to the operator of the hotel or 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 or 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 by the hotel or motel operator.

§ 870.03 EXEMPTIONS.

- (a) No tax shall be imposed under this chapter:
 - 1) Upon rents not within the taxing power of the city under the constitution or laws of the State of Ohio or the United States;
 - 2) Upon rents paid by the State of Ohio or any of its political subdivisions.

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

§ 870.04 REFUSAL TO PAY TAX; FALSE EVIDENCE OF TAX-EXEMPT STATUS.

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

(b) 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 that the tax applies.

§ 870.05 TAX TO BE SEPARATELY STATED AND CHARGED.

(a) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof at the time the occupancy is arranged or contracted and charged for. Such tax shall also be stated separately upon every evidence of occupancy or any bill, 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 of Centerville, and the operator shall be liable to the city for the collection thereof and for the tax.

(b) No operator of a hotel or motel 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.

§ 870.06 REGISTRATION; TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE.

(a) Within 30 days after the effective date of this chapter, or within 30 days after commencing business, whichever is later, each operator of any hotel or motel renting lodging to transient guests shall register the hotel or motel with the Director of Finance and obtain from him or her 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; and

(3) . The date upon which the certificate was issued.

(b) The transient occupancy registration certificate shall read as follows:

“This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the Hotel-Motel Tax Chapter by registering with the Director of Finance of the City of Centerville for the purpose of collecting from transient guests the hotel-motel tax and remitting the tax to the Director of Finance. This certificate does not constitute a permit.”

§ 870.07 RECORDS, INSPECTION, DESTRUCTION.

Each operator shall keep complete and accurate records of all lodging furnished and of the tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices and such other pertinent documents. If the operator furnishes 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 or her 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 order requesting that such records be kept for a longer period of time.

§ 870.08 REPORTING AND REMITTING THE TAX.

(a) On or before the last day of each calendar 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.

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

(c) On or before April 30 of the year following the effective date of this chapter, and each year thereafter, every operator subject to the provisions of this chapter shall make and file with the Finance Director an annual income statement clearly showing the gross room sales for the annual accounting period. If the reconciliation (return) is made for a fiscal year or any period less than a year, the

reconciliation shall be made within four months from the end of such fiscal year or other period.

(d) 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 or her 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 Centerville, for official use only.

(e) If for any reason the hotel or motel shall cease doing business in the City of Centerville, all returns and payments are due immediately upon cessation of business.

(f) All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City of Centerville until payment thereof is made to the Director of Finance. The returns shall be signed by the operator or his or her authorized agent.

§ 870.09 PENALTIES AND INTEREST.

(a) *Original delinquency.* Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty equal to ten percent of the amount of the tax due, in addition to the tax.

(b) *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 ten percent of the amount of the tax and previous penalty first imposed. An additional penalty equal to ten percent 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.

(c) *Fraud.* If the Director of Finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five percent of the amount of the tax shall be added thereto, in addition to the penalties stated in subsections (a) and (b) hereof.

(d) *Interest.* In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half 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.

(e) *Penalties during pendency of appeal.* No penalty provided under the terms of this chapter shall be imposed during the pendency of appeal to the Board of Tax Appeals provided for in this chapter.

§ 870.10 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY DIRECTOR OF FINANCE.

(a) 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 chapter, the Director of Finance shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due.

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

(c) 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.

(d) 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 as to why such specified tax, interest and penalties should not be fixed.

(e) 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 §870.11.

§ 882.11 APPEALS.

Any operator aggrieved by any decision of the Director of Finance with respect to the amount of tax, interest and penalties, if any, due under this chapter, may appeal to the Board of Tax Appeals by filing a notice of appeal with it within 15 days of the serving or mailing of the determination of tax due in accordance

with § 880.16. Any amount found to be due shall be immediately due and payable upon the final decision of the Board of Tax Appeals.

§ 870.12 ACTIONS TO COLLECT.

Except as otherwise provided in this chapter, it is the duty of each operator to collect the tax from the transient guest in accordance with §870.02. Every operator required to collect and remit such tax to the city is liable directly to the city for payment of such tax, whether or not such tax is actually collected from transient guests. Every operator is deemed to be a trustee for the city in collecting and holding the tax required to be collected under this chapter, and the funds so collected are deemed to be trust funds.

§ 870.13 REFUNDS.

(a) 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 chapter, it may be refunded as provided in subsections (b) and (c) hereof, provided that a claim in writing therefor, 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.

(b) An operator may claim a refund or take as a 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.

(c) A transient guest may obtain a refund of taxes overpaid, 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 (a) hereof, 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.

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

§ 870.14 DISBURSEMENT OF FUNDS.

The moneys received under the provisions of this chapter shall be credited to the General Fund of the city and used by the city as directed by the City Council.

§ 870.15 VIOLATIONS.

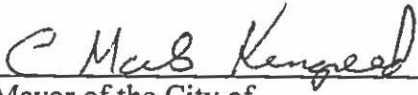
Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the third degree and shall be fined not more than \$500 or imprisoned not more than 60 days, or both.

§ 870.16 SEPARABILITY.

If any section, subsection, sentence, clause or phrase of this chapter or any part thereof is, for any reason, held to be unconstitutional or unenforceable, such decision shall not affect the validity of the remaining portions of this chapter or any parts thereof.

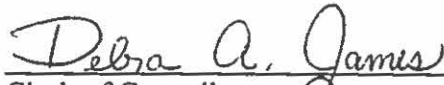
Section 2: This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 17th day of September, 2007.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No.

12-07, passed by the Council of the City of Centerville, Ohio
on the 17th day of September, 2007.

Debra A. James
Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney