

Ordinance No. 4507-19

AN ORDINANCE TO ENACT A TRANSIENT LODGING TAX WITHIN THE CORPORATION LIMITS OF THE CITY OF URBANA AND TO REPEAL URBANA CITY COUNCIL RESOLUTION NO. 2045.

(Sponsored by Councilman Patrick Thackery)

WHEREAS, Urbana City Council originally passed Resolution No. 2045 on May 9, 2000 to establish a lodging tax/hotel excise tax; and

WHEREAS, the City of Urbana elects to exercise its authority under Article XVIII, Section 3 of the Ohio Constitution and shall handle the collection of the City's lodging tax through the City instead of the Champaign County Auditor's Office; and

WHEREAS, it is deemed necessary that the City's authority to handle the collection of the City's lodging tax through the City instead of the Champaign County Auditor's Office be retroactive to May 9, 2000;

WHEREAS, the City of Urbana desires to repeal the resolution that enacted the city's original lodging tax/hotel excise tax and replace this resolution in the form of a Codified Ordinance of the City of Urbana; and

WHEREAS, the City of Urbana and Urbana City Council have engaged in productive discussions about how to improve the collection of the lodging tax and how to further promote travel and tourism within Urbana and Champaign County.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF URBANA, OHIO:

SECTION ONE: Chapter 177 of the Urbana Codified Ordinances is hereby established to replace the transient lodging tax within the corporation limits of the City of Urbana, currently authorized pursuant to Urbana City Council Resolution No. 2045. This replacement transient lodging tax shall become effective on October 1, 2019. The City's authority to handle the collection of the City's lodging tax through the City instead of the Champaign County Auditor's Office shall be retroactively effective on May 9, 2000;

SECTION TWO: Upon the effective date of Chapter 177 of the Urbana Codified Ordinances, Urbana City Council Resolution No. 2045 shall be hereby repealed.

177.01 PURPOSE AND CREATION OF TRANSIENT LODGING TAX.

The purpose of this Chapter and the Sections thereof are to enact a transient lodging tax to provide revenue with 50% thereof to be deposited into a separate fund kept by the Director of Finance which shall be spent solely to make contributions to the Champaign County Visitors Bureau operating within the Champaign County Chamber of Commerce to specifically fund the promotion of tourism within Urbana and Champaign County.

The balance of the revenue generated by the tax is to be deposited in the City General Fund to be used in support of economic development, community development, and community planning. Therefore, the distribution shall be 50% to the Visitors Bureau and 50% to the General Fund.

The Visitors Bureau of the Champaign County Chamber of Commerce shall be required to provide a yearly budget and yearly work plan to the Director of Finance and the Community Development Manager by March 1st of each calendar year.

In addition, the Visitors Bureau of the Champaign County Chamber of Commerce shall within one hundred twenty (120) days after the end of their fiscal year provide to the Director of Finance financial statements of the organization for such fiscal year prepared in accordance with generally accepted accounting principles.

It is presumed that all lodging furnished for transient guests is subject to the tax until the contrary is established.

177.02 DEFINITIONS.

- (a) "Director of Finance" means the Director of Finance of the City of Urbana, Ohio.
- (b) "Lodging Establishment" means 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 one or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. This includes but is not limited to hotels, motels, bed & breakfasts, cabins, condominiums, vacation homes, rooms in residences being rented to guests for sleeping accommodations, owner-occupied residences, accessory dwelling units, and non-owner occupied residences.
- (c) "Occupancy" means the use or possession or the right to the use or possession of any room or rooms or space or portion thereof in any lodging establishment 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 suites of rooms for dwelling, lodging, or sleeping purposes.
- (d) "Operator" means the person who is the proprietor of the lodging establishment, whether in the capacity of the owner, lessee, licensee, mortgagee in possession, or any other capacity. Where the operator performs their functions through a managing agent or 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 the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be in compliance by both.
- (e) "Person" means any natural person, individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, limited liability company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or persons combination acting as a unit.
- (f) "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 occupant is liable for the occupancy without any deduction there from whatsoever.
- (g) "Transient guests" mean persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.
- (h) "Zoning Inspector" means the Zoning Inspector of the City of Urbana, Ohio.

177.03 IMPOSITION OF TAX.

- a) A tax in the amount of three percent (3%) is hereby levied on all rents received by a lodging establishment for lodging furnished to transient guests.
- b) Five (5%) of the funds received shall be charged as an administrative collection fee and retained in the General Fund to defray costs associated with the imposition and administration of the tax.
- c) The tax shall constitute a debt owed by the transient guest to the City, which is extinguished only by payment to the operator as trustee for the City or by payment to the City. The transient guest shall pay the tax to the operator of the lodging establishment 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 lodging establishment. If, for any reason, the tax due is not paid to the operator of the lodging establishment, the Director of Finance may require that such tax shall be paid directly to the Director of Finance.

177.04 EXEMPTIONS.

- a) Exemptions from payment of the tax are hereby granted to the following upon receipt and approval of the exemption certificate prescribed by the Director of Finance:
 - 1) Rents not within the taxing power of the City under the Constitution or laws of Ohio or the United States.
 - 2) Rents paid for the same occupancy for a period exceeding thirty consecutive days.
 - 3) Rents paid by the State of Ohio or any of its political subdivisions on behalf of a transient guest who is in the scope of employment or acting in a representative capacity, and further, is on official business of the State of Ohio or any of its political subdivisions, provided such transient guest submits a fully completed exemption certificate to the Lodging Establishment at the time of occupancy.

177.05 TAX MONEY IS CITY MONEY.

- a) All lodging tax money imposed, levied, and collectible under the provisions of this chapter is hereby declared to be in the constructive possession of and is the property of the City at the time rent is paid by a transient guest and the transient guest is provided occupancy by an operator.
- b) The operator shall not in any manner convert, disburse, use or hold out lodging tax money as the operator's assets.
- c) The intent of this section is to insure against the misuse of public tax monies, for any private purpose whatsoever and to prevent fraud upon the City.

177.06 OPERATOR AND TRANSIENT GUEST LIABILITY.

If any operator fails to collect the tax or any transient guest fails to pay the tax pursuant to the provisions of this chapter, such operator or transient guest shall be personally liable for the amount of the tax applicable to each transaction.

177.07 PROHIBITION AGAINST FALSE EVIDENCE OF TAX-EXEMPT STATUS.

- a) No transient guest shall refuse to pay the full and exact tax as required by this chapter or present to the operator false evidence indicating that the occupancy as provided is not subject to the tax.
- b) If the transaction is claimed to be exempt, the transient guest shall furnish to the operator, and the operator shall obtain from the transient guest, a certificate specifying that 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.

177.08 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 when the occupancy is arranged or contracted for, and upon every evidence of occupancy or any bill or statement of charge made for said occupancy issued or delivered by the operator, and 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.
- b) No operator or lodging establishment 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, if added, any part will be refunded except in the manner hereinafter provided.

177.09 REGISTRATION.

Within thirty days after the effective date of this chapter or within thirty days after commencing business, whichever is later, each operator of any lodging establishment renting lodging to transient guests shall register said establishment with the Zoning Inspector and obtain a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall state the following:

- a) The name of the operator;
- b) The address of the lodging establishment;
- c) The date upon which the certificate was issued;
- d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the City of Urbana, Ohio Transient Lodging Tax Ordinance by registering with the Zoning Inspector for the purpose of collecting from transient guests the Transient Lodging Tax and remitting said tax to the Director of Finance. This certificate does not constitute a permit."

Upon issuance of a "Transient Occupancy Registration Certificate" by the Zoning Inspector under this section, the Zoning Inspector shall transmit a copy of this certificate to the Director of Finance.

177.10 REPORTING AND REMITTING.

- a) Each operator shall, on or before the fifteenth day of each month, make a return to the Director of Finance, on forms provided by the Director of Finance, of the total rents charged and received and the amount of tax collected for transient occupancies during the preceding calendar month. All claims for exemption from the tax filed by transient

guests with the operator during the reporting period shall be filed with the report. At the time that the return is filed, the full amount of the tax collected shall be remitted to the Director of Finance. The Director may require further information in the return if such information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the Director of Finance. All returns and payments submitted by each operator shall be treated as confidential by the Director 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, the County or the City, for official use only.

- b) If any operator required to file monthly returns under this chapter fails, on two consecutive months or three or more months within a twelve month period, to file such returns when due or to pay the tax thereon, the Director of Finance may require such operator to furnish security in an amount equal to the average tax liability of the operator for a period of one year, as determined by the Director of Finance from a review of past returns or other information pertaining to such operator, however, in no case shall the amount be less than one hundred dollars (\$100.00). The security may be in the form of an advance tax payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond, satisfactory to the Director of Finance, conditioned upon payment of the tax due with the returns from the vendor. The security shall be filed within ten days following the operator's receipt of the notice from the Director of Finance of its requirements.
- c) A corporate surety bond filed under this section shall be returned to the operator if, for a period of twelve consecutive months following the date the bond was filed, the operator has filed all returns and paid all taxes due with the time prescribed within this chapter.

177.11 PENALTIES AND INTEREST.

- a) Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the tax.
- b) Continued delinquency. Any operator who fails to pay any delinquent remittance on or before a period of thirty days following the date on which remittance first became delinquent shall pay a second delinquency penalty equal to ten percent (10%) of the amount of the tax and previous penalty in addition to the tax and the ten percent (10%) first imposed. An additional penalty equal to ten percent (10%) of the total tax and the penalty of the previous thirty-day period shall be added for each successive thirty-day period that 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 (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsection (a) 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 percent (1%) per month, or fraction thereof, on the amount of tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- e) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing provided for in

Section 177.12, nor during the pendency of any appeal to the Local Board of Tax Review provided for in Section 177.13.

- f) Abatement of Interest and Penalty. In cases where a return has been filed in good faith, and an abatement has been paid within the time prescribed by the Director of Finance, the Director may abate any charge of penalty or interest, or both.

177.12 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF DIRECTOR.

If any operator fails or refuses 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/she may deem best to obtain facts and information upon which to base his/her estimate of the tax due. As soon as the Director procures such facts and information 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 a report and remittance, he/she shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give notice of the amount so assessed by serving it personally, or by depositing it in the U.S. mail, postage prepaid, addressed to the operator so assessed at his/her last known place of address. The operator may within ten days after serving or mailing of the notice make application in writing to the Director of Finance for a hearing on the amount assessed.

If an 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. If an application is made, the Director 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 in the notice why the amount specified therein should not be fixed for the tax, interest, and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest and penalties should not be so fixed. After the hearing, the Director shall determine the proper tax to be remitted, and shall give written notice to the person in the manner prescribed herein of the determination and the amount of the tax, interest, and penalties. The amount determined to be due shall be payable within fifteen days, unless an appeal is taken as provided in Section 177.13.

177.13 APPEAL.

Any operator aggrieved by any decision of the Director of Finance with respect to the amount of the tax, interest and penalties, if any, may appeal to the Local Board of Tax Review by filing a notice of appeal with the Director within fifteen days of the serving or mailing of the determination of the tax due. The Board shall fix a time and place for hearing the appeal and shall give notice in writing to the operator at this last known place of address. The findings of the Board shall be served upon the appellant in the manner prescribed above for service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

177.14 RECORDS.

Every operator liable for the collection and payment to the City of any tax imposed by this chapter shall keep and preserve, for a period of three years, all records as may be necessary to determine the amount of tax for which she/he may have been liable for collection

of and payment to the City, which records the Director of Finance shall have the right to inspect all reasonable times.

177.15 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 a claim in writing thereof, stating, under penalty of perjury, the specific grounds upon 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 or 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 to the transient to the operator.
- c) 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 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 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 the right thereto by written records showing entitlement thereto.

177.16 ACTIONS TO COLLECT.

Any tax required to be paid by a transient guest under the provisions of this chapter shall be deemed a debt owed by the transient guest to the City. Any 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 chapter shall be liable to an action brought in the name of the City for the recovery of the amount due.

177.17 MONEYS RECEIVED; WHERE CREDITED.

- a) The monies received under this chapter shall be distributed and deposited by the Director of Finance in accordance with Sections 177.01 and 177.03.
- b) The Director of Finance shall make quarterly distributions to the Visitors Bureau in accordance with Section 177.01.


177.99 PENALTY.

- a) Whoever violates any of the provisions of this chapter shall be fined not more than one thousand dollars (\$1,000.00), or imprisoned for a period of not more than six months, or both.
- b) Any operator or other person who fails to refuses to register as requested herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Director of Finance, or who renders a false or fraudulent return or claim is punishable as aforesaid in subsection (a) hereof.

- c) Any person required to make, render, sign or verify any report or claim, who makes a false or fraudulent report or claim is punishable as aforesaid in subsection (a) hereof. Any person required to make, render, sign or verify any report or claim, who makes a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is punishable as aforesaid in subsection (a) hereof.


SECTION FOUR: That all actions of Urbana City Council related to this legislation were conducted in open meetings pursuant to Urbana Codified Ordinances 107.01, including a public hearing held Tuesday, July 9, 2019.


SECTION FIVE: That this ordinance shall take effect and be in force from and after the earliest period allowed by law.


Council President

Passed: 7-23-19

Attest: 
Council Clerk

This Resolution approved by me this 23rd day of July, 2019

Mayor

Department requesting: Community Development		Personnel: D. Crabill	Director of Law review 
Expenditure? Y (N)	Emergency? Y (N)	Public Hearing? (Y) N	
Readings required: 1 2 (3)		If yes, dates advertised: June 29, 2019	
First reading date: June 18, 2019	Second reading date: July 9, 2019	Third/Final reading date: July 23, 2019	

Anticipated effective date if approved: August 6, 2019