

AN ORDINANCE PROVIDING FOR THE IMPOSITION OF A HOTEL TAX IN THE CITY OF CHILLICOTHE, OHIO AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHILLICOTHE, STATE OF OHIO.

SECTION 1. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

(a) "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.

(b) "Auditor" means the City Auditor of the City of Chillicothe, Ohio.

(c) "Hotel" 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 five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(d) "Transient guest" means persons occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.

(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 occupant is liable for the occupancy without any deduction therefrom whatsoever.

(f) "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, mortgage in possession, licensee, or any other capacity. Where the operator performs his 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 liability 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.

(g) "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 hotel 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 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.

SECTION 2. Rate of Tax. Commencing on February 1, 1971 for the purpose of increasing revenue with which to meet the needs of the City of Chillicothe, Ohio, there is hereby levied a tax of three percentum (3 %) on all rents received by a hotel for lodging furnished to transient guests.

Said tax constitutes 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 to the City. The transient guest shall pay the tax to the operator of the hotel at the time of the rent payment. 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 upon the transient guest's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the treasurer may require that such tax shall be paid directly to the treasurer.

SECTION 3. Exemptions. No tax shall be imposed under this chapter

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

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

(c) Upon rents of two dollars (\$2.00) a day or less.

No exemption claimed under paragraphs (a), or (b), 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 Auditor. All claims of exemption under paragraph (c) of this section shall be made in the manner prescribed by the Auditor.

SECTION 4. Tax to be Separately Stated and Charged. 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, and upon every evidence of occupancy or any bill or statement or 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 for the collection thereof and for the tax.

No operator of a hotel 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.

SECTION 4.4 Registration. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting lodging to transient guests shall register said hotel with the Auditor and obtain from him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (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 Transient Occupancy Tax Ordinance by registering with the Auditor for the purpose of collecting from transient guests the Transient Occupancy Tax and remitting said tax to the Auditor. This certificate does not constitute a permit."

SECTION 5. Reporting and Remitting. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Auditor make a return to the Auditor on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. All claims for exemption from tax filed by occupants with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Auditor. The Auditor may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax

and he 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 Auditor. All returns and payments submitted by each operator shall be treated as confidential by the Auditor 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 Ross, or the City of Chillicothe for official use only.

SECTION 5. 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 per cent (10 %) of the amount of the tax, in addition to the tax.

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty equal to ten per cent (10 %) of the amount of the tax and previous penalty in addition to the tax and the ten per cent (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 that the occupant remains delinquent.

(c) Fraud. If the Auditor determines that the non-payment of any remittance due under this ordinance is due to fraud, a penalty equal to twenty-five per cent (25 %) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.

(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-half of 1% 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 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 (7) of this chapter nor during the pendency of any appeal to the Mayor provided for in Section (8) of this chapter.

SECTION 7. Failure to Collect and Report Tax, Determination of Tax by City Auditor. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter the Auditor 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. As soon as the Auditor shall procure such facts and information as he 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 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 Auditor 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 address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Auditor 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 Auditor shall become final and conclusive and immediately due and payable. If such application is made, the Auditor shall give not less than five (5) days written

notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be 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 so fixed. After such hearing, the Auditor 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 fifteen (15) days unless an appeal is taken as provided in Section (8).

SECTION 8. Appeal. Any operator aggrieved by any decision of the Auditor with respect to the amount of such tax, interest and penalties, if any, may appeal to the Mayor by filing a notice of appeal with him within fifteen (15) days of the serving or mailing of the determination of tax due. The Mayor 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 address. The findings of the Mayor 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.

SECTION 9. Records. It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this ordinance to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of, and payment to, the city, which records the treasurer shall have the right to inspect at all reasonable times. *AUDITOR*

SECTION 10. Refunds.

(a) Whenever the amount of any tax, interest, or penalty has been over paid 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 subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Auditor within three years of the date of payment. The claim shall be on forms furnished by the Auditor

(b) 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 Auditor 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 to 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 subparagraph (a) of this section, but only when the tax was paid by the transient guest directly to the Auditor or when the transient guest having paid the tax to the operator, established to the satisfaction of the Auditor 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 right thereto by written records showing entitlement thereto.

SECTION 11. 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 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 chapter

shall be liable to an action brought in the name of the City of Chillicothe for the recovery of such amount.

SECTION 12. Violations; Misdemeanor. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for a period of not more than six months or both such fine and imprisonment.

Any operator or other person who fails or refuses to register as required 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 Auditor or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. 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 guilty of a misdemeanor and is punishable as aforesaid.

SECTION 13. Separability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentence, clause or phrase be declared unconstitutional.

SECTION 14. Moneys Received, Where Credited. The moneys received under the provisions of this chapter shall be credited to the general fund of the city.

SECTION 15. Council declares this Ordinance to be an emergency measure immediately necessary for the immediate preservation of the public peace, health and safety of the City of Chillicothe, Ohio arising out of the need to increase revenues of the City of Chillicothe, Ohio, wherefore, this Ordinance shall take effect and be in force from and after its passage and approval by the Mayor.

Passed 1-12, 1971

Paul E. Hurman
PRESIDENT OF COUNCIL
PRO-TEM

Attest:

J. K. Rudell
CLERK OF COUNCIL

Approved 1-12, 1971

FILED WITH THE MAYOR:

Clark S. Crawford
ACTING MAYOR

1-12, 1971

Voting "aye" were Baughman, Breth, Caldwell, Gire, Helmick, McKell, Scott and Thurman. Mowrey absent.

I, J. K. Rudell, Clerk of Council of the City of Chillicothe, Ohio, hereby certify that the foregoing is a true and correct copy of Ordinance 12 passed by Council on 1-12-71 and approved by the Mayor on 1-12-71 and which was duly published according to law in the Gazette on the following dates: _____

J. K. Rudell
Clerk of Council