

ORDINANCE NO. 2547

**AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE
VILLAGE OF DENNISON, OHIO BY THE ADOPTION OF AN
EXCISE TAX ON LODGINGS – EMERGENCY BASIS**

WHEREAS, Ohio law provides that a municipality may levy an excise tax for any lawful purpose of transaction by which a hotel or motel furnishes lodging to transient guests; and

WHEREAS, this village council deems it necessary and appropriate to adopt such a tax in order to provide additional revenue with which to meet the needs of the municipality.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF DENNISON, OHIO:

SECTION 1. That the Codified Ordinances of the Village of Dennison are hereby to read as follows:

CHAPTER
Transient Occupancy Tax

DEFINITIONS:

As used in this chapter:

- (a) Director means the Director of Finance of the Village of Dennison.
- (b) 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 guests, whether the rooms are in one or several structures, and including, but not limited to, hotels, motels, and inns.
- (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 hotel for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess any room or any suite or 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 the right uses or possesses, or has the right to use or possess, all or any portion of the room or suite of rooms for dwelling, lodging or sleeping purposes.
- (d) Operator means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, mortgagee in possession, license or any other capacity. Where the operator performs such functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purpose 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 other managing agent shall, however, be considered to be compliance by both.
- (e) 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.
- (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 therefrom whatsoever.
- (g) Transient guest means a person occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

RATE OF TAX:

(a) As soon thereafter as permitted by law, there is levied a tax of three percent (3%) on all rents received by a hotel for lodging furnished to transient guests, with total receipts applied as follows:

(1) Ten percent (10%) of the funds received shall be charged as an administrative-collection fee and retained in the general fund of the Village of Dennison to defray costs associated with the imposition and administration of the tax.

(2) The remaining balance of tax receipts shall be divided as follows:

- a. 25% of the funds received shall be deposited into a fund designated for marketing.
- b. 75% of the funds received shall be deposited into a fund designated for revitalization.

(b) This tax constitutes a debt owed by the transient guest to the Village of Dennison which is extinguished only by payment to the operator as trustee for the Village of Dennison, or to the Village of Dennison. The transient guest shall pay the tax to the operator of the hotel 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 upon the transient guest ceasing to occupy space in the hotel.

If for any reason the tax due is not paid to the operator of the hotel, the Director may require that the tax be paid directly to the Director.

EXCEPTIONS:

(a) No tax shall be imposed under this chapter:

- (1) Upon rents not within the taxing power of the Village under the Constitution or laws of Ohio or the United States;
- (2) Upon rents paid by the employees of the Federal Government;
- (3) Upon rents to transient guests staying 30 days or longer in the same room;
- (4) Upon rents of five dollars (\$5.00) a day or less.

(b) No exemption claimed under subsections (a)(1) or (2) hereof 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. All claims of exemption under subsection (a)(3) hereof shall be made in the manner prescribed by the Director.

TAX TO BE SEPARATELY STATED AND CHARGED:

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

(b) 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.

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 hotel renting lodging to transient guests shall register the hotel with the Director and obtain 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:

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

REPORTING AND REMITTING:

Each operator shall, on or before the fifteenth day of each month, make a return to the Director, on forms provided by the Director, 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 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 Director. 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 Village until payment thereof is made to the Director. All returns and payments submitted by each operator shall be treated as confidential by the Director, 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, the county or the Village for official use only.

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 equal to 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 the 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%) penalty first imposed. An additional penalty equal to ten percent (10%) of the total tax and 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 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 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 1705.08, nor during the pendency of any appeal to the Board of Review provided for in Section 1705.09.

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

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 shall proceed in such manner as she/he may deem best to obtain facts and information on 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 failed or refused to collect the same and to make a report and remittance, she/he 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 the serving or mailing of the notice make application in writing to the Director 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, 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 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 after fifteen days, unless an appeal is taken as provided in Section 1705.09.

APPEAL:

Any operator aggrieved by any decision of the Director with respect to the amount of the tax, interest and penalties, if any, may appeal to the Income Tax Board of 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 his 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.

RECORDS:

Every operator liable for the collection any payment to the Village 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 Village, which records the Director shall have the right to inspect at all reasonable times.

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 Village under this chapter, it may be refunded as provided in subsections (b) and (c) hereof, 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 within three years of the date of payment. The claim shall be on forms furnished by the Director.

(b) An operator may claim a refund or take 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 that the person from whom the tax had 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 had 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, or paid more than once, or erroneously or illegally collected or received by the Village, 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, or when the transient guest, having paid the tax to the operator, established 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 his right thereto by written records showing entitlement thereto.

ACTIONS TO COLLECT:

Any tax required to be paid by a transient guest under the provision of this chapter shall be deemed a debt owed by the transient guest to the Village. Any tax collected by an operator which had not been paid to the Village shall be deemed a debt owed by the operator to the Village. Any person owing money to the Village under the provisions of this chapter shall be liable to an action brought in the name of the Village for the recovery of the amount due.

MONEY RECEIVED; WHERE CREDITED:

The monies received under the provisions of this chapter shall be distributed and deposited by the Director.

PENALTY:

(a) Whoever violates any of the provisions of this chapter shall be fined not more than five hundred dollars (\$500.00), or imprisoned for a period of not more than six months, or both.

(b) 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 Director, 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 2. This Council finds and declares that all formal actions concerning and relating to the adoption of this Ordinance occurred in an open meeting of this Council or its committees, in compliance with law.

SECTION 3. This Ordinance shall take effect and be in full force from and after the earliest date allowed by law.

Passed: August 15, 2013

Vote: Yes – 6; No – 0

Approved:

Tim Still, Mayor

Kathy Norman, Fiscal Officer

James J. Ong, Solicitor