

RECORD OF ORDINANCES

Dayton Legal Blank Co.—10116

Ordinance No. 1990-17

Passed January 2, 19 91

AN ORDINANCE LEVYING A HOTEL/MOTEL TAX TO PROVIDE
MONIES FOR THE GENERAL FUND OF THE MUNICIPALITY OF
BROOKVILLE, OHIO.

WHEREAS, it is necessary that such a tax be levied in order to provide funds for the general municipal operations of the Municipality of Brookville, Ohio.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE MUNICIPALITY OF BROOKVILLE, OHIO, THAT:

SECTION I:

Definitions as used in this Ordinance:

- (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) "Director of Finance: means the Director of Finance of the Municipality.
- (c) "Hotel" or "motel" 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 guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.
- (e) Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, property and 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 the proprietor of the hotel or motel, 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 ordinance and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this ordinance 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 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 exer-

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cising 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 II:

Rate of Tax: For the purpose of providing revenue with which to meet the needs of the Municipality, for the use of the General Fund, there is hereby levied a tax, to be known as the "Hotel-Motel Tax," of three percent on all rents received by a hotel or motel for lodging furnished to transient guests.

The tax constitutes a debt owed by the transient guest to the Municipality, which debt is extinguished only by payment to the operator as trustee for the Municipality, or to the Municipality.

The transient guest shall pay the tax to the operator of the hotel or motel and the operator shall collect this tax as Trustee for the Municipality at the time the rent is paid. If the rent is paid in installments, a proportional share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient guests ceasing 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 him or her.

SECTION III:

Exemptions:

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

(1) Upon rents not within the taxing power of the Municipality under the Constitution or laws of the State or the United States; or

(2) Upon rents paid by the State or any of its political subdivisions.

(b) No exemption claimed under subsection (a) hereof 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.

SECTION IV:

Prohibition against false evidence of tax-exempt status: No transient guest shall refuse to pay the full and exact tax as required by this ordinance or present to the operator false evidence indicating that the lodging as furnished is not subject to the tax.

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.

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SECTION V:

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 such 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 Municipality, and the operator shall be liable for the collection thereof and for the tax.

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.

SECTION VI:

Registration: Within thirty days after the effective date of this Ordinance, or within thirty days after commencing business, whichever is later, each operator of any hotel or motel renting lodging to transient guest shall register such 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, inter alia, state the following:

- (a) The name of the operator;
- (b) The address of the hotel or motel;
- (c) The date upon which the Certificate was issued; and
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Hotel-Motel Tax ordinance by registering with the Director of Finance of the Municipality of Brookville for the purpose of collecting from transient guests the Hotel-Motel Tax and remitting said tax to the Director of Finance. This certificate does not constitute a permit."

SECTION VII:

Records: Each operator shall keep complete and accurate records of lodging furnished, together with a record of the tax collected thereon, which shall be the amount due under this ordinance, and shall keep all invoices and 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 the nature of the transaction if exempted for any other reason. Such records and other documents shall be opened during business hours to the inspection of the Director of Finance 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 orders that such records be kept for a longer period of time.

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SECTION VIII:

Reporting and remitting: Each operator shall, on or before the last day of the month following the preceding month, or at the close of any longer reporting period which may be established by the Director of Finance, make a return to the Director, on forms provided by the Director, of the total rents charged and received and the amount of Hotel-Motel Tax collected during the reporting period as established by the Director. 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 establish longer or shorter reporting periods for any Certificate holder if he or she deems it necessary in order to ensure collection of the tax and he or she may require further information in the return if such information is pertinent to the collection of the tax. Returns and payment are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this ordinance shall be held in trust for the account of the Municipality until payment thereof is made to the Director. All returns and payments submitted by each operator shall be confidential and shall not be released by the Director 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 Municipality for official use only.

SECTION IX:

Penalties and interest:

(a) Original Delinquency. If any operator fails to remit any tax imposed by this ordinance within the time required, a penalty of fifteen percent shall be added to the delinquent tax.

(b) Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this ordinance 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 penalty stated in subsection (a) hereof.

(c) Interest. In addition to any penalty imposed, any operator who fails to remit any tax imposed by this ordinance on the date due shall pay interest at the per annum rate set forth herein from the due date of such tax until such tax is paid in full. On the fifteenth day of October of each year, the Director of Finance shall determine the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Fourth Federal Reserve District on such date. For purposes of the requirement of this subsection that interest be computed at a rate per annum, the rate so determined by the Director of Finance, rounded to the nearest whole number percent, shall be the interest rate per annum used in making such computation for interest that accrues during the following calendar year.

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SECTION X:

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

SECTION XI:

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 Municipality under this ordinance, it may be refunded as provided in subsections (b) and (c) hereof, provided 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.

(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 Director 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 or paid more than once or erroneously or illegally collected or received by the Municipality 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 has paid the tax to the operator and has 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 or her right thereto by written records showing entitlement thereto.

SECTION XII:

Credit of moneys received: The moneys received under the provisions of this ordinance shall be credited to the General Fund of the Municipality.

SECTION XIII:

Defrauding the Municipality: No person, with purpose to defraud the Municipality, shall remove, conceal, destroy, encumber, convey or otherwise deal with

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any of his or her property with the intent to hinder the collection of sums of money due to the Municipality under this ordinance or while a sum of money is due to the Municipality under this ordinance.

SECTION XIV:

Failure to register or to furnish data:

(a) No operator shall fail or refuse to register as required by this ordinance; or

(b) Fail to furnish any return, supplemental return or other data required by the Director of Finance under this ordinance.

SECTION XV:

Penalty: Whoever violates or fails to comply with any of the provisions of this ordinance is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

SECTION XVI:

This Ordinance shall revoke and rescind all Ordinances, parts of Ordinances, and Resolutions and parts of Resolutions that are in conflict herewith and shall be enforced from and after the earlier period allowed by law.

PASSED this 2nd day of January, 1991.

ATTEST:


E. Eugene Roeser, Clerk


Michael A. Duncan, Mayor

CERTIFICATE

The undersigned, Clerk of the Municipality of Brookville, Ohio does hereby certify that the foregoing is a true and correct copy of Ordinance No. 1990-17 passed by the Council of said Municipality on the 2nd day of January, 1991.


E. Eugene Roeser, Clerk

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CERTIFICATION OF POSTING

The undersigned, Clerk of Council of the Municipality of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 1990-17 was posted at the Municipal Building, U. S. Post Office and the Brookville National Bank, Brookville, Ohio on the 11th day of January, 1991 to the 9th day of February, 1991, both days inclusive.


E. Eugene Roeser, Clerk