

GWINNETT COUNTY HOTEL/MOTEL OCCUPANCY TAX ORDINANCE

Adopted and Enacted by

Board of Commissioners of Gwinnett County

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**HOTEL/MOTEL OCCUPANCY TAX ORDINANCE
GWINNETT COUNTY, GEORGIA**

Sec. 106-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director of Financial Services means the Director of the Department of Financial Services of Gwinnett County Georgia.

Due Date means the twentieth (20th) day after the close of the monthly period for which the tax is to be computed.

Guestroom means a room occupied, or intended, arranged or designed for occupancy, by one or more occupants.

Hotel means any structure or any portion of a structure, including any lodging house, rooming-house, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, auto court, inn, public club or private club, containing guestrooms and which is occupied, or is intended or designed for occupancy, by guests, whether rent is paid in money, goods, labor or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention or other buildings in which human beings are housed or detained under legal restraint.

Monthly Period means the calendar months of any year.

Occupancy means the use or possession, or the right to the use or possession, of any room or apartment in a hotel or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room.

Occupant means any person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. However, the term "occupant" shall not include state or local government officials or employees when traveling on official business, and who occupy rooms in any hotel for a period of five days or more consecutive days.

Operator means any person operating a hotel in the County, including but not limited to the owner or proprietor of these premises, lessee, sublessee, mortgagee in possession, licensee or

any other person otherwise operating that hotel.

Permanent Resident means any occupant as of a given date who has or shall have occupied, or has or shall have occupied, or has or shall have the right of occupancy, of any guestroom in a hotel for at least ten consecutive days next preceding that date.

Quarterly Period means the quarter of any year as follows: The first quarter is composed of the months of January, February and March; the second quarter is the months of April, May and June; the third quarter is the months of July, August and September; and the fourth quarter is the months of October, November and December.

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 the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom.

Return means any return filed or required to be filed as provided in this article.

Sec. 106-27. Enforcement of article.

(a) **Authority of Licensing and Revenue Manager:** The Licensing and Revenue Manager shall administer and enforce the provisions of this article for the imposition.

(b) **Rules and Regulations:** The Licensing and Revenue Manager shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the County and the State, or the Constitution of this State or the United States, for the administration and enforcement of the provisions of this article and the collection of the taxes hereunder.

(c) **Records Required From Operators; Form:** Every operator renting guest rooms in the County shall keep such records, receipts, invoices and other pertinent papers in such form as the Director of Financial Services may require.

(d) **Examination of Records; Audits:** The Director of Financial Services or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any person renting guest rooms and any person liable

for the tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid.

(e) **Authority To Require Reports; Contents:** In administration of the tax, the Director of Financial Services may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed with the Director of Financial Services when he requires and shall set forth the rental charged for each occupancy, the date or dates of occupancy and such other information as the Director of Financial Services may require.

(f) **Disclosure of Business of Operators; Limitation on Rule:** The Director of Financial Services or any person having an administrative duty under this article shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty; the amount or source of income, profits, losses or expenditures, or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having that administrative duty under this chapter. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties. (Ord. of 4-23-85, para.13)

Sec. 106-28. Applicability of article.

This article shall not apply to any person as to whom, or to any occupancy as to which, it is beyond the power of the Board of Commissioners to impose the tax. It specifically shall not apply to any person not licensed by or required to be licensed by the County for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin or any other place in which rooms, lodging or accommodations are regularly furnished for value. (Ord. of 4-23-85, para.14)

Sec. 106-29. Penalty for fraudulent returns, reports.

Any operator or other person who fails to register as required in this article, 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 Licensing and Revenue Manager or who renders a false or fraudulent return, is guilty of a violation of this article. Any person required to make, render, sign or verify any report who makes any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this article to be made, is guilty of a violation of this article. (Amended 2-2-88, Gwt. Co. Bd. of Comm.)

Sec. 106-30. Use of funds; penalty for violation.

(a) All proceeds generated from the assessment of a hotel/motel occupancy tax shall be spent only for those benefit the citizens of Gwinnett County, Georgia. The Director of Financial Services shall maintain a separate accounting of the proceeds generated under this article. These funds shall be spent and disbursed only upon the vote of the County Commission in accordance with the law.

(b) Any violation of this article is punishable by a fine of not more than \$500 or imprisonment up to 30 days or both. (Amended 2-2-88, Gwt. Co. Bd. of Comm.)

Sec. 106-31. Imposition and Rate of Tax.

Pursuant to Official Code of Georgia Annotated § 48-13-51(a)(4.5), there is hereby levied and assessed and there shall be paid a tax of 7 percent of the rent for every occupancy of a guestroom in a hotel in the County. The tax shall be paid upon any occupancy on and after July 1, 2005, although this occupancy is had pursuant to a contract, lease, or other arrangement made prior to that date. Where rent is paid, or charged or billed, or falls due on either a weekly, monthly, or other term basis, the rent so paid, charged, billed, or falling due shall be subject to the tax to the extent that it covers any portion of the period from July 1, 2005. This payment, bill, charge, or rent due shall be apportioned on the basis of the ratio of the number of days covered thereby. Where any tax has been paid therefore, the licensing and revenue manager may, by regulation, provide for a credit or refund of the amount of that tax upon application therefore as provided in this Chapter.

Sec. 106-32. Persons liable for tax; extinguishment of liability.

Every person occupying a guest room in a hotel in this County is liable for the tax. His liability is not extinguished until the

tax has been paid to the County except that a receipt from an operator maintaining a place of business in this county or from an operator who is authorized by the Licensing and Revenue Manager, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this chapter, regarded as an operator maintaining a place of business in this county, which receipt is given to the occupant pursuant to Section 106-33, is sufficient to relieve the occupant from further liability for the tax to which the receipt refers. (Ord. of 4-23-85, para.3)

Sec. 106-33. Collection of tax by operator; receipt of occupant; rules for collection schedules.

Every operator maintaining a place of business in the county as provided in Section 106-32, and renting guest rooms in the county, not exempted under Section 106-35 shall, at the time of collecting the rent from the occupant, and on demand shall give the occupant a receipt therefor. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent that these credits are incurred in accordance with the rate of tax owing on the amount thereof. The Licensing and Revenue Manager shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of tax. (Ord. of 4-23-85, para.4)

Sec. 106-34. Unlawful advertising regarding tax.

It is unlawful for any operator to advertise or hold out or state to the public or to any guest, 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 rental of the guest room, or that, if added, it or any part thereof will be refunded. (Ord. of 4-23-85, para.5)

Sec. 106-35. Exemptions.

The tax authorized by this article shall not apply to:

(1) Charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty;

(2) The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge;

(3) Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this paragraph. For purpose of the exemption provided under this paragraph, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; or

(4) Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy.

Sec. 106-36. Registration of operator; form and contents; execution; certificate of authority.

(a) Every person engaging or about to engage in business as an operator of a hotel in the county shall immediately register with the Licensing and Revenue Manager on a form provided by the manager. Persons engaged in this business must so register no later than fifteen (15) days after the date the tax becomes effective and is imposed as set forth in Section 106-31; but the privilege of registration imposed after the imposition of the tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof, regardless of registration. This registration shall set forth the name under which the person transacts business or intends to transact business, the location of his place or places of business and such other information to facilitate the collection of the tax as the Licensing and Revenue Manager may require. The registration shall be signed by the owner if a natural person; in case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The Director of Financial Services shall, after this registration, issue without charge a certificate of authority to

each registrant to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable and shall be prominently displayed therein so as to be seen and come readily to the notice of all occupants and persons seeking occupancy. This certificate shall be no assignable and nontransferable and shall be returned immediately to the Director of Financial Services upon the cessation of business at the location named or upon the sale or transfer of the business at that location.

(b) If the licensing and revenue manager deems it necessary in order to facilitate initial registration pursuant to this article of persons engaged in business or prior to the date of imposition of tax as set forth in this article, he may prescribe provisions therefor other than those provided in this section. Those provisions shall be made to affect the purposes of this article. For these purposes, those provisions shall be in lieu of those provided in this section. The registration and the certificate thereof shall have the same effect as that provided in this section. (Ord. of 4-23-85, para.7)

Sec. 106-37. Determinations, returns and payments.

(a) **Due Date of Taxes:** The tax shall become due and payable from the occupant at the time of occupancy of any hotel in this county. All amount of these taxes collected by any operator are due and payable to the county quarterly on or before the last day of the months, of April, July, October and January next succeeding each respective quarterly period as set forth in Section 106-26, until the end of the fourth quarter of 1997. Beginning the first month of 1998 and every succeeding month the Hotel/Motel occupancy tax will become due and payable to the county monthly on or before the twentieth (20th) day of every month next succeeding each respective monthly period.

(b) **Return; time of filing; persons required to file; contents.** On or before the twentieth (20th) day of the month following each monthly period, a return for the preceding monthly period shall be filed with the Licensing and Revenue Manager, in such form as he may prescribe, by every operator and by every person liable to payment of tax pursuant to this article during that monthly period who has not paid the tax, and made return in regard to the related occupation which is the subject of the tax.

(c) **Penalty and interest for failure to pay tax by due date.** A specific penalty of fifteen (15) percent is imposed for failure to pay any amount of taxes when due and payable to the county. Delinquent amounts shall bear interest at the rate one (1.00) percent per month, or fraction thereof, until paid.

(d) **Delivery of Return and Remittance:** The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the revenue collector.

(e) **Collection Fee Allowed Operators:** Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deductions from state tax shall be the same rate authorized for deduction from state tax under the "Georgia Retailers' and Consumers' Sale and Use Tax Act," approved February 20, 1951 (Ga.L.1951, p.360), as now or hereafter amended.

(f) **Extension of Time for Filing a Return and Paying Tax:** For a good cause, the Licensing and Revenue Manager may extend, but not to exceed one (1) month, the time for making any return or payment of tax. No further extension of time may be granted. Any person to whom an extension of time has been granted, who makes a return and pays the tax within the period of extension, shall pay in addition to the tax interest on the amount thereof at the rate of one (1.00) percent per month, or fraction thereof, for a period of this extension to the time of return and payment. (Ord. of 4-23-85, para.8)

Sec. 106-38. Deficiency determinations.

(a) **Recomputation of Tax; Authority To Make; Basis of Recomputation:** If the Licensing and Revenue Manager is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the County by any person, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One (1) or more than one (1) deficiency determination may be made of the amount due for one (1) or more than one (1) period.

(b) **Interest on Deficiency:** The amount of the determination, exclusive of penalties, shall bear interest at the rate of one

(1.00) percent per month, or fraction thereof, from the last day of the month for which the amount or any portion thereof should have been returned until the date of payment.

(c) **Offsetting of Overpayments:** In making a determination, the Licensing and Revenue Manager may offset overpayments for a period or periods against underpayments for another period, against penalties and against the interest on underpayments. The interest on underpayments shall be computed in the manner set forth in section 106-39(c).

(d) **Penalty; Negligence or Disregard of Rules and Regulations:** If any part of the deficiency for which a deficiency determination has been made is due to fraud or an intent to evade this article or other authorized rules and regulations, a penalty of fifteen (15) percent of the amount of this deficiency shall be added thereto.

(e) **Penalty for Fraud or Intent To Evade:** If any part of the deficiency for which a deficiency determination is made due to fraud or an intent to evade any provisions of this article or other authorized rules and regulations, a penalty of twenty-five (25) percent of the deficiency shall be added thereto.

(f) **Notice of Licensing and Revenue Manager's Determination; Service:** The Licensing and Revenue Manager, or his designated representative, shall give to the operator written notice of his determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his address as it appears in the records of the Licensing and Revenue Manager. In case of service by mail of any notice required by this article, the service is complete at the time of deposit in the United States post office.

(g) **Time Within Which Notice of Deficiency Determination To Be Mailed:** Except in the case of fraud, intent to evade this article or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the 15th day of the calendar month following the month for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period should last expire. (Ord. of 4-23-85, para.9)

Sec. 106-39. Determination if no return made.

(a) **Estimate of Gross Receipts:** If any person fails to make a return, the Licensing and Revenue Manager shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total rentals in this County which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information, which is in the director's possession. Upon the basis of this estimate, the licensing and revenue manager shall compute and determine the amount required to be paid the county, adding to the sum thus arrived at a penalty equal to fifteen (15) percent thereof. One (1) or more determinations may be made for one (1) or more than one (1) period.

(b) **Manner of Computation; Offsets; Interest:** In making a determination, the Licensing and Revenue Manager may offset overpayments for a period or penalties, and against the interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in section (c) of this section.

(c) **Interest on Amount Found Due:** The amount of the determination, exclusive of penalties, shall bear interest at a rate of one (1.00) percent per month, or fraction thereof, from the due date of taxes until the date of payment.

(d) **Penalty for Fraud or Intent to Evade:** If the failure of any person to file a return is due to fraud or an intent to evade this article or rules and regulations, a penalty of twenty-five (25) percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the fifteen (15) percent penalty provided in section 106-40.

(e) **Giving of notice; Manner of Service:** Promptly after making this determination, the Licensing and Revenue Manager shall give to the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. (Ord. of 4-23-85, para.10)

Sec. 106-40. Penalties and interest for failure to pay tax.

Any person who fails to pay any tax to the County or any amount of tax required to be collected and paid to the county within the time required shall pay a penalty of fifteen (15) percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest on the unpaid tax or any portion thereof as set forth in Section 106-39(c). (Ord. of 4-23-85, para. 11)

Sec. 106-41. Collection of tax.

(a) **Security, Licensing and Revenue Manager May Exact; Amount; Sale of; Notice of Sale; Return of Surplus:** The Licensing and Revenue Manager, whenever he deems it necessary to ensure compliance with this article, may require any person subject thereto to deposit with him such security as the Licensing and Revenue Manager may determine. The amount of the security shall be fixed by the Licensing and Revenue Manager, but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such a manner as the director deems proper, or ten thousand dollars (\$10,000.00), whichever amount is the lesser. The amount of the security may be increased by the Licensing and Revenue Manager subject to the limitations provided in this section. The Licensing and Revenue Manager may sell the security at public auction, with the approval of the board, if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be addressed to the person at his address as it appears in the records of the Licensing and Revenue Manager. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

(b) **Notice of Delinquency to Persons Holding, Credits or Property of Delinquent; Time For; Duty of Persons so Notified:** If any person is delinquent in the payment of the amount required to be paid by him, or in the event a determination has been made against him which remains unpaid, the Licensing and Revenue Manager may, not later than three (3) years after the payment became delinquent, give notice thereof by registered mail to all persons in the county having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice until the Licensing and Revenue Manager consents to a transfer or disposition or until twenty (20) days elapse after the receipt of the notice. All persons so notified shall, within five (5) days after receipt of the notice, advise the Licensing and Revenue Manager of all these credits, other personal property, or debts in their possession, under their control or owing by them.

(c) **Action For Tax; Time For:** At any time within three (3)

years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the Licensing and Revenue Manager may bring an action in the courts of this State, or any other state or of the United States in the name of the County to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(d) Duty of Successors or Assignees of Operator to Withhold Tax From Purchase Money: If any operator liable for any amount under this article sells out his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover this amount until the former owner produces a receipt from the Licensing and Revenue Manager showing that he has been paid or a certificate stating that no amount is due.

(e) Liability For Failure To Withhold; Certificate of Notice of Amount Due; Time To Enforce Successor's Liability: If the purchaser of a business fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the Licensing and Revenue Manager shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Licensing and Revenue Manager of the amount that must be paid as a condition of issuing the certificate. Failure of the licensing and revenue manager to mail the notice will release the purchaser from any further obligation to withhold purchase price as provided in subsection (d) of this section. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out his business or at the time that the determination against the operator becomes final, whichever event occurs later.

(f) Refund of Tax, Penalty or Interest Paid More Than Once or Erroneously or Illegally Collected: Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the county under this article, it may be refunded provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the Licensing and Revenue Manager within three (3) years from the date of payment. The claim shall be audited and shall be made on forms provided by the licensing and revenue manager. If the claim is approved by the Licensing and Revenue Manager and the board, the excess amount collected or paid

may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid. The balance may be refunded to this person, his administrators or executors. (Ord. of 4-23-85, para.12)

Sec. 106-42. Reserved

Sec. 106-60. Reserved

This Ordinance is adopted this _____ day of _____, 2009, and this Ordinance shall become effective on April 1, 2009.

**BOARD OF COMMISSIONERS
GWINNETT COUNTY, GEORGIA**

By: _____
CHARLES E. BANNISTER, Chairman

ATTEST:

Diane Kemp
County Clerk (SEAL)

APPROVED AS TO FORM:

Tuwanda Williams
Senior Assistant County Attorney