

ORDINANCE NO. 1 , 2022

AN ORDINANCE ESTABLISHING AN EXCISE LODGING TAX

WHEREAS, the Planning Commission approved the construction of a boutique Hotel within the Montgomery Quarter to support economic development in this mixed use public/private site; and

WHEREAS, R.C. § 5739.08 allows the City to levy an excise tax of up to three percent (3.0%) on transactions by which lodging by a Hotel is or are to be furnished to transient guests; and

WHEREAS, to generate revenues for the City to support City operations and the Montgomery Quarter development, the Administration has recommended, and Council concurs, that it is appropriate for the City to enact this excise tax.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. Definitions.

For purposes of this Chapter, the following words and phrases shall have the following meanings ascribed to them respectively. Other words and phrases shall have the meanings ascribed to them under the City of Montgomery Codified Ordinances as appropriate.

(a) *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 (5) or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures. The term shall include a motel if the establishment meets the definition of Hotel as contained in this section.

(b) *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 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 the room or suite of rooms for dwelling, lodging or sleeping purposes.

(c) *Operator* means the person who is proprietor of the Hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, or any other capacity. Where the Operator performs his functions through a managing agent or any type or character other than an employee, the managing agent shall also be deemed an Operator for the purposes of this Ordinance and shall have the same duties and liabilities as his/her 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.

(d) *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 deductions therefrom whatsoever.

SECTION 2. Rate of Tax.

(a) In addition to any tax levied by R.C. § 5739.02 or a similar statute, commencing on July 1, 2022, for the purpose of providing revenue for the purposes of the City's general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements by the City, there is levied a tax of three percent (3.0%) on all Rents received by a Hotel for lodging furnished to transient guests. This tax shall be known as the Transient Occupancy Tax ("Tax").

(b) This Tax constitutes a debt owed by the transient guest to the City

which is satisfied 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 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'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 City Tax Commissioner ("Tax Commissioner") may require that the Tax be paid directly to the Tax Commissioner.

SECTION 3. Exemptions.

(a) No Tax shall be imposed under this Chapter:

- (1) Upon Rents not within the taxing power of the City under the Constitution or laws of the State of Ohio or the United States;
- (2) Upon Rents paid by the State of Ohio or any of its political subdivisions;
- (3) Upon Rents of Two Dollars (\$2.00) a day or less.

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

SECTION 4. 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 and charged for, and upon every evidence of Occupancy, or any bill or statement or charge made for the Occupancy, issued or delivered by the Operator. 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.

(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.

SECTION 5. Registration.

Within Thirty (30) days after July 1, 2022 or within Thirty (30) days after commencing business, whichever is later, each Operator of any Hotel renting lodging to transient guests shall register the Hotel with the Tax Commissioner and obtain from him or her a Transient Occupancy Registration Certificate which shall at all times be posted in a conspicuous place on the premises. This certificate shall, among other things, state the following:

- (a) The name of the Operator;
- (b) The address and business telephone number 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 Tax Commissioner for the purpose of collecting from transient guests the Transient Occupancy Tax and remitting such Tax to the Tax Commissioner. This certificate does not constitute a permit.*

SECTION 6. Reporting And Remitting.

(a) 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 Tax Commissioner, make a return to the Tax Commissioner, on forms

obtainable from him or her, 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 Tax Commissioner. The Tax Commissioner may establish shorter reporting periods for any certificate holder if he/she deems it necessary in order to insure collection of the Tax and he/she may require further information in the return if the 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 Tax Commissioner. All returns and payments submitted by each Operator shall be treated as confidential by the Tax Commissioner and shall not be released 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 Hamilton, or the City of Montgomery for official use only. The nonavailability or failure to obtain forms shall not relieve an Operator from the timely payment of the Tax.

(b) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this Chapter, or file or cause to be filed any incomplete, false or fraudulent return, report, or statement, or aid or abet another in the filing of any false or fraudulent return, report or statement.

(c) If any Operator required to file quarterly returns under this Chapter fails, on Two (2) consecutive quarters within a Twelve (12) month period, to file the returns when due or to pay the Tax thereon, or if any Operator authorized by the Tax Commissioner to file returns at less frequent intervals, fails on two or more occasions within a Twenty-four (24) month period, to file the returns when due or to pay the Tax due thereon, the Tax

Commissioner may require the Operator to furnish security in an amount equal to the average Tax liability of the Operator for a period of One (1) year, as determined by the Tax Commissioner from a review of returns or other information pertaining to the Operator, which amount shall in no event be less than One Hundred Dollars (\$100.00). This 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 Tax Commissioner, conditioned upon payment of the Tax due with the returns from the Operator. This security must be filed within Ten (10) days following the Operator's receipt of the notice from the Tax Commissioner of its requirements. Any security or corporate surety bond filed under this section shall be returned to the Operator if, for a period of Twelve (12) consecutive months following the date the security was posted, the Operator has filed all returns and remitted payment therewith within the time prescribed in this Chapter.

(d) If any Operator required to file returns and to remit Tax due to the City under the provisions of this Chapter, fails for any reason to make the filing or payment, any of its officers or employees having control or supervision of or charged with the responsibility of filing returns and making payments, shall be personally liable for the failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit Tax due. The sum due for this liability may be collected by assessment in the manner provided in this Chapter.

SECTION 7. 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 percent (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 percent (10%) of the amount of the Tax and the previous penalty due, 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 (30) day period shall be added for each successive Thirty (30) day period that the account remains delinquent.

(c) Fraud. If the Tax Commissioner 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 subsections (a) and (b) hereof.

(d) Interest. In addition to the 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 due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

SECTION 8. Failure To Collect And Report Tax; Determination Of Tax By Tax Commissioner.

(a) If any Operator shall fail or refuse to collect the Tax and fail 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 Tax Commissioner shall proceed in such manner as he or she may deem best to obtain facts and information on which to base the estimate of the Tax due. As soon as the Tax Commissioner procures whatever facts and information that he or she 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 or she shall proceed to determine and assess against the Operator the Tax, interest and penalties provided for by this Chapter. In case this determination is made, the Tax Commissioner shall give a

notice of the amount so assessed by serving it personally upon the Operator, or by depositing it in the United States mail, postage prepaid, addressed to the Operator so assessed at his last known address.

(b) The Operator may within Thirty (30) days after the personal serving or mailing of the notice of assessment make application in writing to the Tax Commissioner for a hearing before the Board of Tax Review 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 Tax Commissioner shall become final and conclusive and immediately due and payable.

(c) If the application is made for a hearing before the Board of Tax Review, the Tax Commissioner shall give notice to the Operator of the time and place of the hearing.

(d) At the hearing, the Operator may appear and offer evidence why the specified Tax, interest and penalties should not be so assessed. The Board of Tax Review shall issue a written decision on such appeal within Thirty (30) days of such hearing.

(e) After the decision of the Board of Tax Review, the Tax Commissioner shall determine the proper Tax to be remitted and shall thereafter give written notice to the person of the determination and the amount of the Tax, interest and penalty. The amount determined to be due shall be payable after Thirty (30) days.

SECTION 9. Records.

(a) It shall be the duty of every Operator liable for the collection and payment to the City of any Tax imposed by this Chapter to keep and preserve all records that may be necessary to determine the amount of the Tax that he/she may have been liable for the collection of, and payment to, the City. 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 exempted by reason of such identity, or the nature of the transaction if exempted for any other reason.

(b) All such records and other documents shall be open during business hours to the inspection of the Tax Commissioner and shall be preserved for a period of Four (4) years, unless the Tax Commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer.

SECTION 10. 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 therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Commissioner within Three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Commissioner.

(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 Tax Commissioner that the person from whom the Tax has been collected was not a transient guest. However, 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 guest 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 the filing of a claim in the manner provided in subsection (a) hereof, but only when the Tax was

paid by the transient guest directly to the Tax Commissioner, or when the transient guest having paid the Tax to the Operator, establishes to the satisfaction of the Tax Commissioner 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 and the refund exceeds One Dollar (\$1.00).

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 for the recovery of such amount.

SECTION 12. Moneys Received, Where Credited.

The moneys received under the provisions of this Chapter shall be credited to the General Fund of the City.

SECTION 13. Penalty.

(a) Whoever violates any provision of this Chapter shall be guilty of a minor misdemeanor on a first offense punishable by a fine of up to One Hundred Fifty Dollars (\$150.00).

(b) For a second offense, violation of this Chapter occurring within one year of a previous offense, such person shall be guilty of a fourth-degree misdemeanor punishable by a fine of up to Two Hundred Fifty Dollars (\$250.00) and up to Thirty (30) days confinement in a jail.

(c) For a third offense, violation of this Chapter occurring within one year of a previous offense, such person shall be guilty of a third-degree misdemeanor punishable by a fine of up to Five Hundred Dollars (\$500.00) and up to Sixty (60) days confinement in a jail.

(d) For a fourth offense, violation of this Chapter occurring within one year of a previous offense, such person shall be guilty of a second-degree misdemeanor punishable by a fine of up to Seven Hundred Fifty Dollars (\$750.00) and up to Ninety (90) confinement in a jail.

(e) For a fifth offense, violation of this Chapter occurring within one year of a previous offense, such person shall be guilty of a first-degree misdemeanor punishable by a fine of up to One Thousand Dollars (\$1,000.00) and up to One Hundred Eighty (180) days confinement in a jail.

(f) Each day that a violation occurs may be charged as a separate offense.

SECTION 14. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: April 6, 2022

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Craig D. Margolis
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director