

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2019-28

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

PROVIDING FOR THE ENACTMENT OF NEW CHAPTER 195, EXCISE TAX - LODGING, OF PART ONE, ADMINISTRATIVE CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF BEREА, ESTABLISHING A THREE PERCENT (3%) EXCISE TAX ON TRANSACTIONS BY WHICH LODGING BY A HOTEL IS OR IS TO BE FURNISHED TO TRANSIENT GUESTS, PURSUANT TO THE AUTHORITY GRANTED IN REVISED CODE 5739.08(A), AND ESTABLISHING PROCEDURES THEREFORE.

WHEREAS, Revised Code 5739.08(A) authorizes municipal corporations to levy an excise tax not to exceed three percent (3%) on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by Section 5739.02 of the Revised Code; and

WHEREAS, Revised Code 5739.08(A) permits the proceeds of the excise tax to be used for any lawful purpose; and

WHEREAS, the Council of the City of Berea wishes to enact a three percent (3%) excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests to provide funds with which to meet the needs of the City of Berea, as provided by law.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That Chapter 195, Excise Tax - Lodging, of Part One, Administrative Code, of the Codified Ordinances of the City of Berea is hereby enacted, as designated in Exhibit "A" and incorporated herein.

SECTION 2. That proceeds from the excise tax enacted in new Chapter 195 shall be used for any lawful purpose, and deposited in to the General Fund.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: April 1, 2019

ATTEST: [Signature]
Clerk of Council

APPROVED: April 4, 2019
[Signature]
Mayor

[Signature]
President of Council

Approved as to Form:

[Signature]
Director of Law

Exhibit
"A"

CHAPTER 195 EXCISE TAX - LODGING

195.01 DEFINITIONS.

As used in this chapter:

- (a) "Hotel" has the same meaning as that stated in Section 5739.01(M) of the Ohio Revised Code and Zoning Code of the City of Berea, except a "hotel" includes establishments in which fewer than five (5) rooms are used for the accommodation of transient guests. The term "hotel" also includes a "bed and breakfast" and "boarding house" as defined in the Zoning Code of the City of Berea.
- (b) "Motel" is included within the meaning of "hotel" as set forth in (a) above.
- (c) "Transient guest" means a person occupying a room or rooms for sleeping accommodations for less than sixty consecutive days.
- (d) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the State and its political subdivisions, and combinations of individuals of any form.
- (e) "Director of Finance" or "Finance Director" means the individual holding the office of Finance Director of the City of Berea or her designee.
- (f) "Operator" means the person who is the proprietor of a hotel, bed and breakfast or boarding house, whether in the capacity of owner, lessee, licensee, mortgagee in possession, or any other capacity. Where the operator performs its 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 purposes 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 the managing agent shall, however, be considered compliance by both.

195.02 AUTHORITY TO LEVY TAX; PURPOSES OF TAX

The excise tax on lodging transactions established by this Chapter is authorized by Section 5739(B)(A) of the Ohio Revised Code. This excise tax is in addition to any tax levied pursuant to Sections 5739.02, 5739.09, or any other section of the Ohio Revised Code to the greatest extent permitted by law.

The purpose of the tax is to provide revenue with which to meet the needs of the City, for the use of the General Fund of the City or for any other lawful purpose.

195.03 IMPOSITION OF TAX AND RATE.

- (a) Commencing June 1, 2019 an excise tax is hereby levied on each transaction by which lodging by a hotel is or is to be furnished to transient guests, pursuant to Section 5937.08(A) of the Ohio Revised Code.
- (b) The tax is three percent (3%) of the amount paid or to be paid by the transient guest for the lodging. The tax applies and is collectible at the time the lodging is furnished, regardless of the time when the amount for lodging is paid.

(c) The tax does not apply to lodging furnished to the United States government, State or any of its political subdivisions.

(d) The tax is not a part of the rent and shall be separately stated as such on every rent invoice, bill, statement or other written charge therefore.

(e) The tax does not apply to optional services which may include: room service, porter or bellboy service, valet services, pay-for-view movies; wake-up calls and charges for telephone services, or other miscellaneous charges not related to the provision of accommodation and which are stated separately from the charge for lodging.

(f) For the proper administration of this Chapter and to prevent evasion of the tax, it is presumed that all lodging furnished by hotels, motels and motor inns in the City to transient guests is subject to the tax until the contrary is established.

195.04 TRANSIENT GUEST TO PAY TAX; PROOF OF EXEMPTION

The tax imposed by this Chapter shall be paid by the transient guest to the operator, and each operator shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

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.

195.05 REFUND OF ILLEGAL OR ERRONEOUS PAYMENTS

The Finance Director shall refund to operators the amount of taxes paid illegally or erroneously or paid on any illegal or erroneous assessment where the operator has not reimbursed himself from the transient guest. When such illegal or erroneous payment or assessment was not paid to the operator but was paid by the transient guest directly to the Director of Finance or agent, the refund shall be paid to the transient guest.

Applications shall be filed with the Director of Finance on a form furnished by the Director, within four (4) years from the last date of the occupancy that is alleged to be in error. Upon filing of the application, the Finance Director shall determine the amount of refund due and certify the amount. The Finance Director shall draw a warrant for such certified amount to the person claiming such refund, and she shall make such payments from the General Fund.

195.06 RECORDS; INSPECTION; DESTRUCTION

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 Chapter, 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 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 by any order requiring that they be kept for a longer period of time.

195.07 RETURNS REQUIRED; PROCEDURE; FORFEIT FOR FAILURE TO FILE; APPEAL

(a) Each operator shall, on or before the twenty-first (21) day of each calendar month, make and file a return for the preceding month, on forms prescribed by the Director of Finance, showing the receipts from furnishing lodging, the amount of tax due from the operator to the City for the period covered by the return and such other information as the Director of Finance deems necessary for the proper administration of this Chapter. The Finance Director may extend the time for making and filing returns for good cause shown. Returns shall be filed by delivering or mailing them to the Director of Finance, together with the payment for the full amount shown to be due.

(b) Each Bed and Breakfast or boarding house operator shall, on or before the last day of each quarter (March 31, June 30, September 30, December 31,) make and file a return for the preceding quarter, on forms prescribed by the Director of Finance, showing the receipts from furnishing lodging, the amount of tax due from the operator to the City for the period of time covered by the return, and such other information as the Director of Finance deems necessary for the proper administration of this Chapter. The Director of Finance may extend the time for making and filing returns for god cause shown. Returns shall be filed by delivering or mailing them to the Director of Finance, together with payment for the full amount shown to be due.

(c) The Director of Finance may authorize operators whose tax liability is not such as to merit monthly returns, as determined by the Director upon the basis of administrative costs to the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

(d) The Director of Finance shall stamp or otherwise mark on each return the date it is received and shall also show thereon, by stamp or otherwise, the amount of payment received with the return.

(e) Appeal

Any operator aggrieved by any decision of the Director of Finance with respect to the amount of the tax, interest, and penalties, if any, may appeal to the Board of Tax Review, in accordance with the procedures set forth in Section 191.21 of the Codified Ordinances of the City of Berea.

195.08 PENALTIES AND INTEREST

(a) Original delinquency. Any operator failing 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 itself.

(b) Continued Delinquency. Any operator failing to remit any delinquent remittances on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay an additional 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.

(c) Fraud. If the Director of Finance 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 (a) and (b) above.

(d) No penalty provided under this section shall be imposed during the pendency of any hearing or appeal.

(e) In cases where returns were filed in good faith, and an assessment has been paid within the time prescribed by this Chapter or where otherwise allowed within the Director of Finances' discretion, then the Director may abate any charge of penalty or interest or both.

195.09 FOUR-YEAR LIMITATION FOR ASSESSMENTS; EXCEPTIONS.

No assessment shall be made or issued against an operator or transient guest for any tax imposed by or pursuant to this Chapter more than four years after the return date for the period in which the lodging was furnished or more than four years after the return for such period is filed, whichever is later. This section does not bar an assessment:

- (a) When the Finance Director has substantial evidence of amounts of taxes collected by an operator from the lodging of transient guests, which were not returned to the City; or
- (b) When an assessed operator failed to file a return as required.

195.10 TAX TO BE PAID BY TRANSIENT GUEST; FALSE EVIDENCE OF TAX-EXEMPT STATUS PROHIBITED.

No transient guest shall refuse to pay the full and exact tax as required by this Chapter. No transient guest shall present false evidence to the operator indicating that the lodging, as furnished, is not subject to the tax.

195.11 OPERATOR TO CORRECT TAX; REBATE PROHIBITED.

No operator shall fail to collect the full and exact tax as required by this Chapter. No operator shall refund, remit or rebate to a transient guest, either directly or indirectly, any of the tax levied pursuant to this Chapter, or make in any form of advertising, verbal or otherwise, any statements which might imply that he is absorbing the tax, or paying the tax for the transient guest by an adjustment of prices, or furnishing lodging at a price including the tax, or rebating the tax in any other manner.

195.12 RETURN MUST BE FILED; PROCEDURE IN A FAILURE TO FILE.

(a) 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.

(b) If any operator required to file monthly returns under this Chapter fails, in two consecutive months or in three or more months within a twelve-month period, to file such returns when due or to pay the tax thereon, or if any operator authorized by the Director of Finance to file returns at less frequent intervals fails on two or more occasions within a twenty-four month period, to file such returns when due or to pay the tax due thereon, the Director of Finance may require such operator to furnish security in an amount equal to the average tax liability of the operator for a period of one year, as determined by the Finance Director from a review of returns or other information pertaining to such operator, which amount shall in no event be less than one hundred dollars (\$100.00). The 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 Director of Finance, conditioned upon payment of the tax due within the returns from the operator. The security must be filed within ten (10) days following the operator's receipt of the notice from the Director of Finance of its requirements.

A corporate surety bond filed under this section shall be returned to the operator if, for a period of twelve consecutive months following the date the bond was filed, the operator has filed all returns and remitted payment therewith within the time prescribed by this chapter.

195.13 PERSONAL LIABILITY OF CORPORATE OFFICERS OR EMPLOYEES

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 such 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 such 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 such liability may be collected by assessment.

195.14 INTENT.

It is the intent of this Chapter to levy an excise tax of three percent (3%) on transactions by which lodging by a hotel, motel or motor inn is or is to be furnished to transient guests as referred to and authorized by Ohio R.C. 5739.08(A)). Accordingly, this Chapter shall be construed to effectuate that purpose and so as to be consistent with any requirement of law compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.

195.15 SEPARABILITY.

If any sentence, clause, section or part of this Chapter or any tax imposed as specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Chapter.

195.99 PENALTY.

Whoever violates any of the provisions of this Chapter shall upon conviction be not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).