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Port Clinton, OH Code of Ordinances

**CHAPTER 171
Transient Occupancy Tax**

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CROSS REFERENCES

Power to levy - see Ohio R.C. 5739.02(c), 5739.024

Posting motel rates - see Ohio R.C. 3731.16

171.01 DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the following meanings ascribed to them respectively.

- (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 or more rooms are used for the accommodation of guests, whether the rooms are in one or several structures.
- (b) "Transient accommodation " means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests in which four (4) or less rooms are used for the accommodations of such guests, whether such rooms are in one (1) or several structures.
- (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 or transient accommodation 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.
- (d) "Operator" means the person who is the proprietor of the hotel, or transient accommodation 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 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 his 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.

- (e) "Person" means any individual, firm, partnership, limited liability company, 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.
- (h) "Treasurer" means the City Treasurer of the City of Port Clinton.
(Ord. 40-05. Passed 12-27-05.)

171.02 RATE OF TAX.

(a) For the purpose of providing revenue with which to meet the needs of the City for general operating expenses, there is levied an excise tax of three percent (3%) on all rents received by a hotel or transient accommodation for lodging furnished to transient guests.

(b) This tax constitutes a debt owed by the transient guest to the City, which is extinguished only by payment to the operator as trustee for the City. The transient guest shall pay the tax to the operator of the hotel or transient accommodations 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 or transient accommodations. 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 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, written proof of exempt status as required by this Chapter. If no such proof of exemption is obtained, it shall be presumed the tax applies.

(Ord. 40-05. Passed 12-27-05.)

171.03 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 Ohio or the United States;
- (2) Upon rents paid by the State of Ohio, or any of its political subdivisions;
- (3) Upon rents of five dollars (\$5.00) a day or less.

(b) No exemption claimed under subsection (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 the Treasurer. All claims of exemption under subsection (a)(3) hereof shall be made in the manner prescribed by the Treasurer.

(Ord. 30-85. Passed 12-20-85.)

171.04 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 an 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 City, and the operator shall be liable for the collection thereof and for the tax.

(b) No operator of a hotel or transient accommodation 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.

(Ord. 40-05. Passed 12-27-05.)

171.05 REGISTRATION.

Within thirty days after the effective date of Ordinance 30-85, or within thirty days after commencing business, whichever is later, each operator of any hotel or transient accommodation renting lodging to

transient guests shall register with the Treasurer, and obtain from him 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 name of the operator;
- (b) The address of the hotel or transient accommodations;
- (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 Treasurer for the purpose of collecting from transient guests the Transient Occupancy Tax and remitting said tax to the Treasurer. This certificate does not constitute a permit."

(Ord. 40-05. Passed 12-27-05.)

171.06 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 Treasurer, make a return to the Treasurer, on forms provided by him, of the total rents charged and received, and the amount of tax collected for transient occupancies. 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 Treasurer. The return shall be signed by the operator or an authorized agent thereof. The Treasurer may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he 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 Treasurer. All returns and payments submitted by each operator shall be treated as confidential by the Treasurer, 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 City for official use only.

(b) The Treasurer may authorize operators whose tax liability is not such as to merit monthly returns, as determined by the Treasurer 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.

(Ord. 40-05. Passed 12-27-05.)

171.07 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) Fraud. If the Treasurer 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.

(c) 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.

(d) 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 171.08 nor during the pendency of any appeal to the Board of Review provided for in Section 171.09.

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

(Ord. 30-85. Passed 12-20-85.)

171.08 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY CITY TREASURER.

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 Treasurer shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax

due. As soon as the Treasurer procures such facts and information 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 a report and remittance, 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 Treasurer shall give notice of the amount so assessed by serving it personally, or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his 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 Treasurer 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 Treasurer, shall become final and conclusive, and immediately due and payable. If an application is made, the Treasurer shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a 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 Treasurer 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 171.09.

(Ord. 30-85. Passed 12-20-85.)

171.09 APPEAL.

Any operator aggrieved by any decision of the Treasurer with respect to the amount of the tax, interest and penalties, if any, may appeal to the Board of Review by filing a notice of appeal with the Treasurer within fifteen days of the serving or mailing of the determination of the tax due. The Board of Review 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 of Review 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.

(Ord. 30-85. Passed 12-20-85.)

171.10 BOARD OF REVIEW.

(a) A Board of Review, consisting of a chairman and two other individuals each to be appointed by the Mayor and approved by Council, is hereby created. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearings by the Board may be conducted privately and the provisions of Section 171.06 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(b) The Board shall hear and pass on appeals from any ruling or decision of the Treasurer, and at the request of the operator, person or Treasurer, is empowered to substitute alternate methods of allocation. The Board shall, in hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

(Ord. 30-85. Passed 12-20-85.)

171.11 RECORDS.

Every operator liable for the collection and payment to the City 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 as he may have been liable for the collection of and payment to the City, which records the Treasurer shall have the right to inspect at all reasonable times.

(Ord. 30-85. Passed 12-20-85.)

171.12 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 Treasurer within three years of the date of payment. The claim shall be on forms furnished by the Treasurer.

(b) An operator may claim a refund or take as 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 Treasurer 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 City, 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 Treasurer, or when the transient guest, having paid the tax to the operator, establishes to the satisfaction of the Treasurer 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.

(Ord. 30-85. Passed 12-20-85.)

171.13 ACTIONS TO COLLECT.

(a) 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 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 in an action brought in the name of the City for the recovery of the amount of tax due.

(b) 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.

(1) When the Treasurer has substantial evidence of amounts of taxes collected by an operator from transient guests's lodging which were not returned to the City;

(2) When the operator assessed failed to file a return as required.

(Ord. 40-05. Passed 12-27-05.)

171.14 MONEYS RECEIVED; WHERE CREDITED.

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

(Ord. 30-85. Passed 12-20-85.)

171.15 LIABILITY.

(a) The operator or authorized agent having control of or charged with the responsibility of making and filing the return and making payment is personally liable for failure to file the return or pay the tax due as required by this chapter.

(b) If any operator corporation or other entity 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, members 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 or other entity shall not discharge an officer's, member's, or employee's liability for a prior failure of the corporation or other entity to file returns or remit tax due. The sum due for such liability may be collected by assessment in the manner provided in this chapter.

(c) If any operator fails to collect the tax or any transient guest fails to pay the tax imposed by or pursuant to this chapter on any transaction subject to the tax, such operator or transient guest shall be personally liable for the amount of the tax applicable to the transaction. The Treasurer may make an assessment against either the operator or transient guest, as the facts may require, based upon any information in his possession.

(d) An assessment against an operator in cases where the tax imposed by or pursuant to this chapter has not been collected or paid, shall not discharge the transient guest's liability to reimburse the operator for the tax applicable to such transaction.

(e) In each case, the Treasurer shall give to the operator or transient guest assessed written notice of such assessment. Such notice may be served upon the operator or transient guest assessed personally or by registered or certified mail. An assessment issued against either, pursuant to the provisions of this chapter shall not be considered an election of remedies, nor a bar to an assessment against the other for the tax applicable to the same transaction, provided that no assessment shall be issued against any operator or transient guest for the tax due on a particular transaction if said tax has actually been paid by another.

(Ord. 40-05. Passed 12-27-05.)

171.16 REPORTS MUST BE FILED; FRAUDULENT REPORTS.

(a) No person, including any officer of a corporation, employee of a corporation, or member of a limited liability company, 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, on two consecutive months or on 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 Treasurer 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 Treasurer may:

- (1) 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 Treasurer 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 Treasurer, conditioned upon payment of the tax due with the returns from the operator. The security must be filed within ten days following the operator's receipt of the notice from the Treasurer of its requirements.
- (2) 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 in this chapter.

(Ord. 40-05. Passed 12-27-05.)

171.17 PERSONAL LIABILITY OF CORPORATE OFFICERS OR EMPLOYEES.

If any operator corporation, or limited liability company, 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, members, 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 or limited liability shall not discharge an officer's, member'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 in the manner provided in this chapter.

(Ord. 40-05. Passed 12-27-05.)

171.99 PENALTY.

(a) Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree.

(b) No operator or other person shall fail or refuse to register as required herein, or furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Treasurer, or render a false or fraudulent return or claim. No person required to make, render, sign or verify any report or claim, shall make 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.
