

AN ORDINANCE

THE MAYOR AND BOARD OF ALDERMEN DO HEREBY ORDAIN TO AMEND CHAPTER 86, Taxation, ARTICLE II, HOTEL-MOTEL EXCISE TAX, OF THE CITY OF ACWORTH, GEORGIA CODE OF ORDINANCES.

WHEREAS, the hotel/motel taxes are collected through GMA by a second party vendor, The Resource Professionals Group; (TRPG) and

WHEREAS, TRPG is recommending that the City updates its existing hotel-motel excise tax ordinance to the latest edition in conjunction with the state statute; and

WHEREAS, the amended ordinance also addresses a levy on facilitation of the rental of transient accommodations on behalf of another person, natural or non-natural by statute in 2021.

Section 1. That the Code of Ordinances of the City of Acworth Georgia, is hereby amended to read as follows:

ARTICLE II. - HOTEL-MOTEL EXCISE TAX Sec.

86-41. - Definitions.

The following words, terms and phrases shall, for the purposes of this article and except where the context clearly indicates a different meaning, be defined as follows:

City. The City of Acworth and, variously, the incorporated territory of Cobb County, wherein the city government is empowered to impose this tax by O.C.G.A. 48-13-50, et seq.

City clerk. The duly appointed city clerk, other public official, or non-natural person designated by the governing authority to administer the tax.

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

Estimated tax liability. The lodging provider's prospective tax liability based upon the average monthly tax remittance in the prior fiscal year, as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.

Folio. Primary documentation produced by a hotel that demonstrates interaction between the lodging provider and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax, and the method(s) of payment.

Guest room. Accommodations occupied, or intended, arranged, or designed for transient occupancy, by one or more occupants for the purpose of temporary living quarters or use.

Hotel. Any facility or any portion of a facility, including any house, rooming house, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto or trailer court, truck stop, tourist cabin, campground, lodge, inn, time-share or other condominium, apartment community, public club, or private club, containing guest accommodations and which is occupied, or is intended or designed for temporary occupancy, by paying guests, whether rent is paid in money, goods, labor, or

otherwise. It does not include any school dorm, hospital, asylum, sanitarium, orphanage, jail, prison, or other facility in which human beings are housed and detained under legal restraint.

Lodging provider.

(a) Any person operating a hotel in the city including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, lender in possession, licensee or any other person operating such hotel; and who is subject to the taxation imposed for furnishing for value to the public any rooms, lodgings, or accommodations.

(b) Any person as defined by O.C.G.A. Section 48-8-2(8)(M.3) who is subject to the taxation imposed for facilitating and furnishing for value to the public any rooms, lodgings or accommodations on behalf of another person.

Occupancy. The use or possession, or the right to the use or possession of any guest room 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 guest room.

Occupant. Any person who, for a consideration, uses, possesses, or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Permanent resident. Any occupant who, as of a given date, has or shall have occupied or has or shall have the right of occupancy of any guest room in a hotel for not less than 30 continuous days next preceding such date.

Person. Any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number; excepting a franchiser as defined by O.C.G.A. Section 48-13-50.4(i); and the United States, the State of Georgia and any instrumentality of either thereof upon which the city is without power to impose the tax.

Rent. 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 lodging provider to the occupant, without any deduction therefrom whatsoever.

Tax. The tax on occupants imposed by this ordinance, as provided for by O.C.G.A. 48-13-50, et seq., specifically 48-13-51(a)(5-1).

Sec. 86-42. - Tax rate.

There shall be paid for every occupancy of a guest room in a hotel in the city a tax at the rate of eight percent (8%) of the amount of rent unless an exemption is provided under section 86-44.

Sec. 86-43. - Collection of tax by lodging provider.

Every lodging provider furnishing guest rooms in a hotel in the city shall collect a tax of eight percent (8%) on the amount of rent from the occupant unless an exception is provided under section 86-44. The lodging provider shall provide a receipt to each occupant, which receipt shall reflect both the amount of rent and the amounts of this and other tax applicable. This tax shall be due from the occupant and shall be collected by the lodging provider at the same time that the rent is collected. The lodging provider shall be liable to the city for the full amount received or collected as tax, whether collected appropriately or inappropriately; and for any amount of tax that should have been collected but was not.

- (a) Any person who receives or collects the tax or any consideration represented to be the tax from another person holds the amount so collected in trust for the benefit of the city and is liable to the city for the full amount collected, plus penalty and interest.
- (b) Any person who controls or supervises the collection of the tax from another person, or any person who controls the accounting for or remittance of the tax, and who willfully fails to remit or cause to be remitted the tax is liable as a responsible person for an amount equal to the tax not remitted or caused to be remitted, plus penalty and interest. The dissolution of a corporation, partnership or other business or fraternal association does not affect a responsible natural person's liability under this sub-section. Furthermore, the liability imposed by this sub-section shall be in addition to any other penalty provided by law.

Sec. 86-44. - Exceptions.

No tax shall be collected from an occupant after becoming a permanent resident; or from an occupant who certifies in writing that he is staying in such accommodations as a result of his residence having been rendered uninhabitable by fire or other casualty; or from the United States and the State of Georgia or any instrumentality of either thereof; or from any official or employee of the State, its units of local government or any other instrumentality of the State, when traveling on official business and presenting written substantiation thereof or paying by State or local government credit or debit card; or from a foreign sovereign enjoying exemption by treaty or consular convention, when presenting substantiation issued by the United States Department of State. Occupancy provided without charge in money or otherwise is not subject to this tax.

Sec. 86-45. - Registration of lodging provider; form and contents; execution; certificate of authority.

Every person engaging or about to engage in business as a lodging provider in the city shall immediately register with the city clerk on a form provided by said official. Persons engaged in such business must so register not later than thirty (30) days after the date that this ordinance becomes effective. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the city clerk. The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; in case of ownership by a corporation, by an officer. The city clerk shall, after such registration, issue without charge a certificate of authority to each lodging provider to collect the tax from the occupant. A separate registration shall be required for each place of business of a lodging provider. Each certificate shall state the name and location of the business to which it is applicable.

Sec. 86-46. - Determination generally; returns; payments.

- (a) Due date of taxes. All amounts of such tax shall be due and payable to the city clerk monthly on or before the twentieth (20th) day of the month next succeeding the respective prescribed period. The tax shall become delinquent for any prescribed period after the twentieth (20th) day of each succeeding month during which it remains unpaid.
- (b) Penalty and interest for failure to pay tax by due date. A lodging provider who fails to make any return or to pay the amount of tax as prescribed, shall be assessed a specific penalty to be added to the tax in the amount of five percent (5%) or five dollars (\$5.00), whichever is greater, if the failure is for one (1) month or less; and an additional five percent (5%) or five dollars \$5.00, whichever is greater, for each additional month or fraction thereof in which such failure shall continue; provided, however, that the aggregate penalty for any single violation shall not exceed twenty-five percent (25%) or twenty-five dollars (\$25.00), whichever is greater. Delinquent amounts shall bear interest monthly, or fraction thereof, until paid at the rate set forth in O.C.G.A. Section 48-2-40.
- (c) Acceptance of delinquent return and remittance without imposing penalty and interest; authority; requirements. If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the city by affidavit attached to the return, and remittance is made within ten (10) days of the due date, such return may be accepted exclusive of penalty and interest.
- (d) Waiving of penalty and interest; authority. O.C.G.A. Section 48-2-41, relating to the authority to waive interest, and Section 48-2-43, relating to the authority to waive penalty, shall apply; provided, however, that the governing authority shall stand in lieu of the Georgia Commissioner of Revenue, and the city shall stand in lieu of the state.
- (e) Penalty for fraud. In the case of a false or fraudulent return, or of failure to file a return where willful intent exists to defraud the city of any tax due, a penalty of fifty percent (50%) shall be assessed.
- (f) Return; remittance; time of filing; lodging providers required to file; contents. On or before the twentieth (20th) day of the month succeeding the respective prescribed period, a return for such preceding period together with appropriate remittance shall be filed with the city clerk. The return shall report the gross rent, taxable rent, exempt rent, amount of tax collected or otherwise due for the period, and such other information as may be required by the city clerk.

amount of tax so remitted shall be credited against the amount to be due with the regular return for the monthly period to be filed on the twentieth (20th) day of the succeeding month.

(g) Extension of time of filing; authority; requirements; remittance; penalty and interest. The governing authority of the city may, for good cause, extend the time for making returns for not longer than thirty (30) days. No extension shall be valid unless granted in writing upon written application of the lodging provider. Such grant may not be applicable for longer period than twelve (12) consecutive months. A lodging provider granted an extension shall remit tax equaling not less than one hundred percent (100%) of the tax paid for the corresponding period of the prior fiscal year; such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty or interest shall be charged during the first ten (10) days of the extension period. Thereafter, interest shall be collected on the unpaid balance at the rate set forth in O.C.G.A. Section 48-2-40.

(h) Collection fee allowed lodging providers. Lodging providers 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 deduction shall be three percent (3%) of the amount due, but only if the amount due was not delinquent at the time of payment.

Sec. 86-47. - Deficiency determinations.

(a) Re-computation of tax; authority to make; basis of re-computation. If the city clerk is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by any lodging provider, they may compute and determine the amount required to be paid upon the basis of any information within their possession or that may come into their possession. One (1) or more deficiency determinations may be made of the amount due for one or more monthly periods.

(b) Penalty and interest for failure to pay tax. Penalty and interest shall be assessed upon the amount of any determination, as provided by section 86-46.

(c) Notice of determination; service of. The city clerk shall give to the lodging provider written notice of their determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the lodging provider at his address as it appears in the records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee, or when made by statutory overnight delivery.

(d) Time within which notice of deficiency determination to be mailed. Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within three(3) years after the twentieth (20th) day of the calendar month following the respective prescribed period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period should last expire.

(e) Appeal or protest of deficiency determination. The procedure for contesting a deficiency determination shall be as provided by O.C.G.A. Section 48-5-380.

Sec. 86-48. - Determination if no return made.

- (a) Estimate of gross receipts. If any lodging provider fails to make a return, the city clerk shall make an estimate of the amount of the gross receipts of the lodging provider, or as the case may be, of the amount of total rentals in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the lodging provider failed to make the return and shall be based upon any information which is or may come into the possession of the city clerk. Written notice shall be given in the manner prescribed in subsection 86-47(c).
- (b) Penalty and interest for failure to pay tax. Penalty and interest shall be assessed upon the amount of any determination, as provided by section 86-46.

Sec. 86-49. - Collection of tax by city.

- (a) Action for delinquent 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 city clerk may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with penalty, interest, court fees, filing fees, attorney's fees, and other legal fees incident thereto.
- (b) Lodging provider selling or quitting business. If any lodging provider liable for any amount under this ordinance sells out his business or quits his business, he shall make a final return and remittance within fifteen (15) days after the date of selling or quitting the business.
- (c) Duty of successors or assigns of lodging provider to withhold tax from purchase money. If any lodging provider liable for any amount of tax, interest or penalty under this ordinance sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the city clerk either a receipt reflecting full payment or a certificate stating that no amount is due.
- (d) Liability for failure to withhold. If the purchaser of a business fails to withhold from the purchase price as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.
- (e) Credit for 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 city, it may be refunded by the governing authority. If the lodging provider or person determines that they have overpaid or paid more than once, which fact has not been determined by the city clerk, such person shall have three (3) years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claimant may request a hearing before the governing

authority at which the claim and any other information available will be considered. The governing authority shall approve or disapprove the claim and notify the claimant of its action.

Sec. 86-50. - Administration of ordinance ; record keeping.

- (a) Authority of city clerk. The city clerk shall administer and enforce the provisions of this ordinance for the collection of the tax.
- (b) Records required from lodging providers, etc.; form. Every lodging provider renting guest rooms in the city shall preserve, for a minimum of three (3) years, all folios, receipts, certificates of exemption and such other documents as the city clerk may prescribe, and in such form as he may require. Said records shall at all times be available for examination within the city.
- (c) Examination of records; audits. The city clerk or any person authorized in writing by same may examine the books, papers, records, financial reports, equipment and other facilities of any lodging provider renting guest rooms and any lodging provider liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the lodging provider, to ascertain and determine the amount required to be paid. Such examination shall be conducted at the place of lodging provision unless the city clerk shall stipulate another place within the city. However, such an examination respecting a person merely facilitating rental may be undertaken only upon the request of that person as provided for by O.C.G.A. Section 48-13-50.4(h).
- (d) Authority to require reports; contents. In administration of the provisions of this article, the city clerk may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax. The reports shall be filed with the city clerk when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exemption, or such other information as the city clerk may prescribe.

Sec. 86-51. - Violations.

Any lodging provider who fails, neglects or refuses to register for collecting the tax as provided by Section 86-43, or to collect the tax as provided by Section 86-43 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred (\$100.00), or confinement for a term not to exceed three months, or both fine and confinement. Any lodging provider who fails or refuses to make any return as provided by Section 86-43, to keep adequate records or to open them for inspection by the city, or to furnish other data reasonably requested by the governing authority shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred (\$100.00), or confinement for a term not to exceed three months, or both. Any lodging provider who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred (\$100.00), nor more than three hundred (\$300.00), or confinement for a term not to exceed three months, or both. Each and every day during any

portion of which any violation is committed, continued, or permitted, shall constitute a separate offense, and shall be punished accordingly.

Sec. 86-52. - Effective date.

The ordinance and the tax levied hereby shall become effective upon its adoption by the Mayor and Board of Aldermen of the City of Acworth and signature of the Mayor subject to Georgia Laws 1983, page 4119.

Section 2. It is hereby declared to be the intention of this ordinance that its sections, paragraphs, sentences, clauses,

And phrases are severable, and if any section, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this ordinance.

Section 3. All Ordinances in conflict with this Ordinance are hereby repealed.

Date: _____

Thomas W. Allegood, Mayor

Attest:

Regina R. Russell, City Clerk