

ORDINANCE

STATE OF GEORGIA
GWINNETT COUNTY
CITY OF DULUTH

AN ORDINANCE TO IMPLEMENT TITLE 48, CHAPTER 13, ARTICLE 3, SECTION 51(a)(3) OF THE OFFICIAL CODE OF GEORGIA ANNOTATED, EXCISE COLLECTION ON ROOMS, LODGINGS, AND ACCOMODATIONS, AND TO PROVIDE FOR THE COLLECTION BY OPERATOR; TO PROVIDE FOR ADMINISTRATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the governing body of the City of Duluth, Georgia, a political subdivision of the State of Georgia, is authorized under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated to levy certain excise taxes; and

WHEREAS, the City of Duluth, Georgia, a political subdivision of the State of Georgia is designated as a “special district” pursuant to Title 48, Chapter 13, Article 50.1 of the Official Code of Georgia Annotated for the purpose of implementing an excise tax on rooms, lodging and accommodations; and

WHEREAS, the governing body of the City of Duluth, Georgia, a political subdivision of the State of Georgia, is required under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated to make available a designated portion of funds so collected for the purpose of promoting, attracting, stimulating, and developing conventions and tourism by a destination marketing organization in the City of Duluth, Georgia; and

WHEREAS, the governing body of the City of Duluth, Georgia, a political subdivision of the State of Georgia, is required under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated to make available a designated portion of funds so collected for the purpose of tourism product development in the City of Duluth, Georgia, with any balance of the funds so designated for the purpose of promoting , attracting, stimulating, and developing conventions and tourism by a destination marketing organization in the City of Duluth, Georgia;

NOW THEREFORE, the governing body of the City of Duluth, Georgia, a political subdivision of the State of Georgia, resolves to adopt a new Excise Tax Ordinance pursuant to said authority; and therefore, the governing body of the City of Duluth, Georgia, a political subdivision of the State of Georgia does hereby repeal Chapter 7, Article IXI in its entirety and in its place publish, state and promulgate the following ordinance:

ARTICLE XIX. - HOTEL-MOTEL EXCISE TAX

Sec. 7-800. - 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:

City means the City of Duluth, Georgia.

Due date means the 20th day after the close of the monthly period for which tax is to be computed.

Guest room means a room occupied, or intended, arranged, or designed for occupancy, by one or more occupants for the purpose of living quarters or residential use.

Hotel means any structure or any portion of a structure, including any lodging house, rooming house, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, truckstop, tourist cabin, lodge, inn, timeshare or other condominium, apartment community, public club, or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise.

Occupancy means the use or possession, or the right to 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 or use, or other agreement, or otherwise.

Operator means any person operating a hotel in this city including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, lender in possession; licensee or any other person otherwise operating such hotel.

Permanent resident means any occupant as of a given date who has or shall have occupied or has or shall have the right of occupancy of any guest room in a hotel for more than 30 consecutive days.

Person means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number, excepting the United States of America, the state and any political subdivision of either thereof upon which the city is without power to impose the tax herein provided.

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 there from whatsoever.

Return means any return filed or required to be filed as herein provided.

Sec. 7-801. - Hotel-motel excise tax levy.

There is hereby set and levied on each occupant of a guest room of any hotel located within the corporate limits of the city a tax in the amount of five percent (5%) of the rent for such occupancy.

Sec. 7-802. - Proceeds of the tax.

The proceeds of this tax shall be used in accordance with O.C.G.A. § 48-13-51(a)(3).

Sec. 7-803. - Use of funds generated by additional taxes.

Upon approval by the city council of the city on an annual basis, the additional tax imposed by this article in excess of the first three percent shall be paid to Explore Gwinnett.

Sec. 7-804. - Collection of tax by operator.

It shall be the duty of every operator of a hotel located within the city to collect the tax on occupants imposed in section 44-32 of this article.

Sec. 7-805. - Exemptions.

Notwithstanding any other provision of this article:

(a) No tax shall be imposed hereunder upon a permanent resident.

(b) No tax shall be imposed on charges made for hotel rooms, provided to any person who certifies that they are staying in such hotel room, as a result of the destruction of their home or residence by fire or other casualty.

(c) The tax authorized by this article shall apply to the fees or charges for any hotel room during the first 30 days of continuous occupancy and shall not apply to charges imposed for any continuous occupancy thereafter. The tax authorized by this article shall not apply to charges made for the use of meeting rooms and other such facilities or to any hotel room provided without charge.

(d) The tax authorized by this article shall not apply to the charges for any hotel room, furnished for a period of one or more days for use by state or local government 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 hotel room with a state or local government credit card, such room shall be deemed to have been furnished for use by the state or local government official or employee traveling on official business for purposes of the exemption provided by this subsection.

Sec. 7-806. - Registration of operator.

(a) Every person engaging in or about to engage in business as an operator of a hotel in this city shall immediately register such business with the city clerk, on a form provided by the city clerk for such purpose. The required registration hereunder shall set forth the name under which the operator transacts business or intends to transact business, the location of his place or places of business, and such information as would facilitate the collection of the tax by the city clerk. The registration shall be signed by the owner if a natural person; by a member or partner in case of ownership by an association or partnership; by an officer in the case of ownership by a corporation.

(b) A separate registration shall be required for each place of business of an operator.

Sec. 7-807. - Certificate of taxing authority.

Upon the registration of an operator under this article, the city clerk shall issue to such operator without charge a certificate of authority to collect the tax on occupants. Each certificate shall state the name and location of the business to which it relates.

Sec. 7-808. - Due date and required report.

All taxes levied by this article shall be due and payable to the city clerk monthly on or before the 20th day of every month next succeeding each respective month in which such taxes are collected, and payment shall be accompanied by a return for the preceding monthly period showing the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for the period, and such other information as may be required by the city clerk. The tax imposed by this article shall become delinquent for each month after the 20th day of each succeeding month during which it remains unpaid. An operator who fails to make any return or to pay the taxes levied by this article, shall be assessed a specific penalty to be added to the tax in the amount of five percent or \$5.00, whichever is greater, if the failure is for one month or less; and an additional five percent or \$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 25 percent or \$25.00, whichever is greater. Delinquent amounts shall bear interest at the rate of one percent per month, or fraction thereof, until paid.

Sec.7-809- Collection fee allowed operators.

Operators collecting the tax levied by this article 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 the same rate authorized for deductions from the state sales and use tax pursuant to O.C.G.A. § 48-8-1, et seq.

Sec. 7-810. - Determination if no return made.

(a) If any operator fails to file a return as required under the provisions of this article, the city clerk or her designated representative shall make an estimate of the amount of gross rentals of such operator which are subject to the tax. The estimate shall be made for the period or periods in which the operator failed to file the return and shall be based upon any information which is or may come into the possession of the city clerk.

(b) The city clerk or her designated representative shall give to the operator written notice of his determination as herein provided. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator at his address as it appears in the records of the city clerk. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.

(c) Penalties and interest shall be assessed upon the amount of any determination as provided in section 7-808 of this article.

Sec. 7-811. - Deficiency determination.

(a) If the city clerk or her designated representative 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 operator, 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 or more deficiency determinations may be made of the amount due for one or more monthly periods.

(b) The city clerk or her designated representative shall give to the operator written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator 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.

(c) Penalties and interest shall be assessed upon the amount of any determination as provided in section 7-808 of this article.

Sec. 7-812. - Required records.

Each operator collecting a tax under the provisions of this article shall keep, for a period of at least three years, all records, receipts, invoices and other pertinent papers setting forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the city clerk may require.

Sec. 7-813. - Administration and enforcement.

The city clerk or her designated representative shall administer and enforce the provisions of this article for the collection of the tax herein imposed, and in so doing shall have the following powers:

(a) To examine, or authorize the examination of, the books, papers, records, financial reports, equipment and other facilities of any operator renting hotel rooms to persons subject to the tax, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid; (b) To require the filing of reports by any person having in his possession or custody information relating to rentals of hotel rooms which are subject to the tax herein levied.

Sec. 7-814. Action for collection of tax.

At any time within three years after any tax levied under this article or any portion of such tax required to be collected becomes due and payable, the city attorney may bring an action in a court of competent jurisdiction in the name of the city to collect such amount due, together with interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

Sec. 7-815. - Successors or assignees of operator.

If any operator liable for any tax, interest, or penalty imposed by this article sells his or her business or quits the business, he or she shall make a final return and payment within 15 days after the date of selling or quitting the business. The operator's successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due under this article and unpaid until the former owner and/or operator produces either a receipt from the city showing that the taxes, interest, and penalties due under this article have been paid or a certificate from the city that no tax, interest, or penalty is due under this article. If the purchaser of a business fails to withhold the purchase money as required by this article, that person shall be personally liable for the payment of any taxes, interest, and penalties accruing under this article and unpaid by any former owner and/or operator and/or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner and/or operator and/or assignor. Paid executions may be transferred and enforced as otherwise provided by law.

Sec. 7-816. - Penalties.

Any operator who shall violate any provision of this article shall be guilty of a misdemeanor amenable to the process of the city's municipal court and, upon conviction, shall be punished

as provided by the city's charter and as otherwise allowed by law. Each and every day that a violation exists shall be deemed a separate offense.

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

IT IS SO ORDAINED this _____ day of _____ **2021.**

Mayor Nancy Harris

Those councilmembers voting in favor:

Marsha Anderson. Bomar, Post 1

Marline Thomas, Post 2

Billy Jones, Post 3

Kelvin J. Kelkenberg, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk