

**CITY OF ELKHORN
ORDINANCE NO. 15-05**

**AN ORDINANCE TO AMEND THE ELKHORN MUNICIPAL CODE
AT CHAPTER 3, TITLED “FINANCE AND BUDGETING”**

WHEREAS, the City of Elkhorn has previously adopted a code of ordinances; and

WHEREAS, it is necessary that said code be amended so as to more appropriately reflect statutory requirements pertaining to the use of Room Tax proceeds.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkhorn that the Elkhorn Municipal Code is amended at Chapter 3, titled “Finance and Budgeting”

1. Section 3.06, titled; “Hotel and Motel Room Tax” is hereby deleted in its entirety and replaced with Section 3.06 titled “Hotel and Motel Room Tax” as attached hereto and made a part hereof.

THIS ORDINANCE shall be in force from and after its introduction and publication as provided by statutes.

APPROVED AND ADOPTED this 20th day of April, 2015.

Brian Olson, Mayor

ATTEST:

Cairie Virrueta, City Clerk

1st Reading: 04/06/15
2nd Reading: 04/20/15
Adopted: 04/20/15
Published: 04/30/15

Article 3.06 - Hotel and Motel Room Tax

3.06.1 – Definitions. The following definitions shall be applicable in this chapter:

- (1) "Forfeiture" means an additional sum of money to be paid by an entity beyond any tax liability
- (2) "Gross receipts" has the meaning as defined in Section 77.51(4)(a), (b), and (c), Wis. Stats., insofar as applicable.
- (3) "Hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, hotels, tourist rooms, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins, and any other building or group of buildings in which accommodations are available to the public irrespective of whether membership is required for use of the accommodations, except accommodations rented for a continuous period of more than one month and accommodations furnished by hospitals, sanitariums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable, or educational purposes provided that no part of the net earnings of such corporations and associations inure to the benefit of any private shareholder or individual.
- (4) "Tourism entity" means a nonprofit organization that provides staff, development and promotional services for the tourism industry in the municipality, and as one its primary purposes is to generate paid overnight stays.
- (5) "Tourism promotion and development" means any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at establishments on which a room tax may be imposed under this section, and that are located within the municipality imposing dais room tax.
 - Marketing projects, including advertising media buys, creation and distribution of printed or electronic promotional tourist materials, or efforts to recruit conventions, seminars, sporting events, or motor coach groups.
 - Transient tourists' informational services.
 - Tangible municipal development that supports and/or enhances the tourism industry within the municipality.
- (6) "Transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations to the public.

3.06.2 - Room tax imposed

- (1) Pursuant to Section 66.0615, Wis. Stats., and effective January 1, 2005, a tax is hereby imposed on the privilege and service of furnishing, at retail, rooms or lodging to transient by hotel keepers, motel operators, bed and breakfast operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall not be subject to the selective sales tax imposed by Section 77.52(2)(a)1., Wis. Stats.
- (2) The tax herein imposed shall be at 6% of the gross receipts from those establishments furnishing of room and lodging.

3.06.3 Tourism Entity designated

The Elkhorn Area Chamber of Commerce shall be the designated Tourism Entity charged with the responsibility to allocate room tax proceeds in support of tourism-related activities consistent with statutory requirements.

3.06.4 Distribution of room tax proceeds

The proceeds of such tax collected shall be allocated as follows:

- (a) 2% shall be retained by the party taxed and filing the return hereunder as compensation for administration of the tax;
- (b) 70% shall be distributed to the organization designated herein as the City of Elkhorn "Tourism Entity" to be spent on tourism, promotion and development as defined herein; provided however, that not more than 45% of said proceeds shall be used to support administrative costs of the organization, including but not limited to wages/benefits; building rent; utilities; and other similar fixed costs associated with the Entity's operating expenses. The Entity shall be responsible to allocate the remaining portion of the room tax it receives from the City to promote and develop tourism in the City consistent with the requirements of Section 66.0165 Wisconsin Statutes.
- (c) 28% shall be retained by the City to be used for whatever purposes the Common Council may designate. Provided, however, that the expenditure of such funds shall be used to support community events and/or community organization that serve to foster economic and community development.

3.06.5 Tracking and reporting room tax expenditures

The Tourism Entity shall track the use of room tax revenue expenditures and state the impact of such expenditures in relation to generating paid overnight stays in the city. The Entity shall permit and allow inspection of its records pertaining to the expenditure of room tax proceeds upon request of the Elkhorn Common Council. The Entity shall report annually to the City the purposes for which the room tax revenues it received were spent; and annually submit its budget to the City for approval.

3.06.6 -Collection of taxes

The room tax is imposed by Section 3.06.2 shall for the first calendar quarter and for each calendar quarter thereafter is due and payable on the last day of the month next succeeding the calendar quarter for which imposed.

(a) *Quarterly Room Tax Returns.* A return shall be filed with the City Treasurer on or before the same date on which such tax is due and payable. Such return shall be on a form provided by the City Treasurer and shall show the gross receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of tax imposed, and such other information as the City Treasurer may require provided that such additional information is directly related to the room tax.

(b) *Annual Room Tax Reports.* Every person required to file a quarterly return shall also file an annual calendar year return on a form provided by the City Treasurer, which shall be due and filed as part of the quarterly return for the 4th quarter of each calendar year.

The annual return shall summarize the quarterly returns, reconcile and adjust for any errors or the quarterly returns, and contain certain additional information as the City Treasurer may require, provided that such additional information is directly related to the room tax. All annual returns shall be signed by the person required to file a return, or his (her) duly authorized agent.

3.06.7 -Administration of tax collections

The City Treasurer shall be responsible for the administration and collection of the room tax. The City Treasurer may, by field audit, determine the tax required to be paid to the City or the refund due to any person under this chapter. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information within the City Treasurer's

possession. Whenever the City Treasurer has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, the City Treasurer is authorized to examine and inspect the books, records, memoranda, and property of the person in order to verify the tax liability of that person or of another person. Nothing herein shall prevent the City Treasurer from making a determination of tax at any time.

3.06.8 - Deposit of taxes collected

The City Treasurer shall deposit all taxes collected herewith in the *City's Economic Development and Tourism Fund*, and shall maintain a separate account with such fund of all such taxes collected.

3.06.9 -Disbursement of taxes collected

The City Treasurer shall pay to the Elkhorn Area Chamber of Commerce each quarter from the taxes collected that portion of taxes allocated for the Chamber in subsection 3.06.3. Quarterly disbursement of taxes shall be made on or before the fifteenth day of the month following the month in which the taxes are received by the City Treasurer.

3.06.10 Registration

Every person furnishing room, lodging or sites under Section 3.06.2 shall annually file with the City Treasurer a registration form for each place of business, All registrations shall be made upon a form prescribed by the City Treasurer.

3.06.11 Liability on sale of business

If any person liable for any amount of tax under this chapter sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Treasurer that has been paid or a certificate stating that no amount is due. If a person subject to the tax imposed by this chapter fails to withhold such amount of tax from the purchase price as required, he shall become personally liable for payment of the amount required to be withheld by him to the extent of the price of the accommodations valued in money.

3.06.12 Failure to file returns

(1) If any person liable for any amount of tax under this chapter sells out his business or stock of goods or quits the business, his successors or assignees shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Treasurer that it has been paid or a certificate stating that no amount is due. If a person hereby made subject to the tax imposed by this section fails to withhold such amount of tax from the purchase price as required, he shall become personally liable for payment of the amount required to be withheld by him based upon the price of the accommodations valued in money.

(2) The Treasurer may, by office audit, determine the tax required to be paid to the City or the refund due to any person under this Section. This determination may be made upon the basis of the facts contained in the return being audited or on the basis of any other information within the City Treasurer's possession. One or more such office audit determinations may be made of the amount due for any one or more than one period.

(3) The Treasurer may, by field audit, determine the tax required to be paid to the City or the refund due to any person under this article. The determination may be made upon the basis of the facts contained in the return being audited or upon other information within the Treasurer's possession.

3.06.13 Violations

(1) If any person fails to file a return as required by this article, the Treasurer shall make an estimate of the amount of the gross receipts under Section 3.06.2. Such estimate shall be made for a period for which such person failed to make a return and shall be based upon any information which is in the Treasurer's possession or may come into his possession. On the basis of this estimate, the Treasurer shall compute and determine the amount required to be paid by the City, adding to the sum thus arrived at a penalty equal to 10% thereof. One or more such determination may be made for one or more than one period.

(2) All unpaid taxes under this chapter shall bear interest at the rate of 15% per annum from the due date of the return until the first day of the month following the month in which the tax is paid or deposited with the Treasurer. An extension of time within which to file a return shall not operate to extend the due date of the return for purposes of interest computation.

3.06.14 Delinquent taxes

Delinquent tax returns shall be subject to a \$200.00 late filing fee. In addition, should it be determined by the Treasurer that any of the following are the case due to negligence: no return is filed, a return is filed late, or that an incorrect return is filed; then, and in such circumstance(s), the entire tax finally determined shall be subject to a penalty of 25% of the tax exclusive of interest or other penalties. If a person fails to file a return when due or files a false or fraudulent return with the intent in either case to defeat or evade the tax imposed by this article, a penalty of 50% shall be added to the tax required to be paid, exclusive of interest and other penalties.

3.06.15 Security

(1) In order to protect the revenue of the City, the Common Council, upon inquiry or request of it by the Treasurer, may require any person liable for the tax imposed by this chapter to place with the Treasurer, before or after a permit is issued, security in the form of cash or corporate bond in an amount not to exceed the highest quarterly payment of the previous year's return (if such performance record exists) or, lacking such previous performance record, in such other amount as the Council may set, but not to exceed \$5,000.00. If any taxpayer fails or refuses to place such security, the Treasurer may refuse or revoke such permit. If any taxpayer is delinquent in the payment of any taxes imposed by this article, the Treasurer may, upon 10 days' notice, recover the taxes, interest and penalties from the security placed with the Treasurer by such taxpayer. No interest shall be paid or allowed by the City to any person for the deposit of such security.

(2) Every person liable for the tax imposed by this chapter shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form as the City Treasurer requires.

3.06.16 Returns confidential

- (1) All tax returns, schedules, exhibits, writings or audit reports relating to such returns on file with the City Treasurer may divulge their contents to the following and on others:
 - (a) The person who filed the return;
 - (b) Officers, agents or employees of the Federal Internal Revenue Service or the State Department of Revenue;
 - (c) Officers, employees, or agents of the City Finance Committee;
 - (d) Such other public officials of the City when deemed necessary;
 - (e) No person having administrative duty under this chapter shall make known in any manner the business affairs, operations, or information obtained by this investigation of records of any person on whom a tax is imposed by this chapter, or the amount or source of income, profits,

losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person, except as provided herein.

3.06.1 Penalty.

Any person who is subject to the tax imposed by this chapter who fails to obtain a permit as required in Section 3.06.4, or who fails or refuses to permit this inspection of his records by the City Treasurer, or who fails to file a return as provided in this chapter shall, upon conviction thereof, and in addition to any other penalty imposed herein, be subject to a forfeiture as prescribed by Section 25.04, not to exceed 5% of the tax imposed by this article.