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## ORDINANCE 2023-0002

The Mayor and City Council of Winterville, having held a public vote on its regularly held meeting on November 14, 2023, hereby adopts the following ordinance to Enact a Hotel-Motel Tax pursuant to O.C.G.A. § 48-13-50 et seq.

(1) The City of Winterville's Code of Ordinances are hereby amended by adding Article V-  
Hotel Motel Tax

Sec. 32-200	Definitions.
Sec. 32-201	Penalties.
Sec. 32-202	Administration generally.
Sec. 32-203	Imposed; rate.
Sec. 32-204	Collection generally.
Sec. 32-205	Exemptions.
Sec. 32-206	Registration of operator.
Sec. 32-207	Payment; returns; collection fees; penalties and interest for late payments.
Sec. 32-208	Determination of deficiency of amount.
Sec. 32-209	Determination upon failure to file return.
Sec. 32-210	Overpayment.
Sec. 32-211	Purchasers or successors of business.
Sec. 32-212	Legal action to collect.
Sec. 32-213	Proceeds of the tax.

### **Sec. 32-200 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Due date:* From the twentieth day after the close of the monthly period for which tax is to be computed.

*Guest room:* 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:* A hotel, motel, inn, lodge, tourist camp, tourist cabin, short term rental, or any other place in which rooms, lodgings or accommodations are furnished for value.

*Monthly period:* The calendar months of any year.

*Occupancy:* The use or possession or the right to the 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:* 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 to use or other agreement or otherwise.

*Operator:* Any person operating a hotel in the City of Winterville, including, but not limited to, the owner or proprietor of such premises, lessee, sublease, lender in possession, licensee or any other person otherwise operating such hotel.

*Permanent resident:* Any occupant 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 next preceding such date.

*Person:* An individual, firm, partnership, joint venture, association, social club, fraternal organization, joint-stock company, corporation, limited liability company, 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 thereof of either, upon which the City of Winterville is without power to impose the tax herein provided.

*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 operator to the occupant, without any deduction therefrom whatsoever.

*Return:* Any return filed or required to be filed as provided in this chapter.

*Tax:* The tax imposed by this chapter.

### **Sec. 32-201 Penalties.**

- (a) Any person violating any of the provisions of this chapter shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in Section 1-9. Each such person shall be guilty of a separate offense for each day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person and shall be punished accordingly. Any operator or other person who fails to register as required herein or to furnish any return required to be made or who fails or refuses to furnish a supplemental return or other data required by the City Clerk or who renders a false or fraudulent return shall be deemed guilty of any offense and upon conviction thereof shall be punished as aforesaid.
- (b) Any person who fails to pay any taxes due under this chapter shall not be permitted to renew his or her business license or alcoholic beverage license until all such taxes have been paid in full.

### **Sec. 32-202 Administration generally.**

- (a) The City Clerk shall administer and enforce the provisions of this chapter for the collection of the tax imposed by this chapter.

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- (b) Every operator renting guest rooms in the City of Winterville to a person shall keep such records, receipts, invoices and other pertinent papers in such form as the City Clerk may require.
  - (c) The City Clerk, or designee, may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting guest rooms to a person and any operator liable for the tax in order to verify the accuracy of any return made or, if no return is made by the operator, to ascertain the amount required to be paid.
  - (d) In the administration of the provisions of this chapter, the City Clerk may require the filing of reports by any persons or class of persons having in such person's or persons' possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed with the City Clerk and shall set forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the City Clerk may require.

**Sec32-203 Imposed; rate.**

There shall be paid a tax of three (3%) percent of the rent for every occupancy of a guest room in a hotel in City of Winterville. The tax imposed by this chapter shall be paid upon any occupancy on and after January 1, 2024 although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date.

**Sec. 32-204 Collection generally.**

Every operator maintaining a place of business in the City of Winterville as provided in section 32-203 and renting guest rooms in City of Winterville not exempted under section 32-205 shall collect a tax of three (3%) percent on the amount of rent from the occupant.

**Sec. 32-205 Exemptions.**

No tax pursuant to this chapter shall be imposed upon the following:

- (1) Permanent residents;
- (2) Georgia state or local government officials or employees while traveling on official business and using guest rooms furnished for a period of one or more days;
- (3) Persons who certify they are staying in a guest room as a result of the destruction of their home or residence by fire or other casualty;
- (4) Persons using a meeting room or other such facilities; or
- (5) Persons using a guest room provided without charge.

**Sec. 32-206 Registration of operator.**

Every person engaging or about to engage in business as an operator of a hotel in the City of Winterville shall immediately register with the City Clerk on a form provided by the same. The privilege of registration after the imposition of the tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof, regardless of registration. The registration shall set forth the name under which such person transacts business

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or intends to transact business, the location of his or her places of business, and such other information which would facilitate the collection of the tax as the City Clerk may require. 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 the 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 operator to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable.

**Sec. 32-207 Payment; returns; collection fees; penalties and interest for late payments.**

- (a) All amounts of such taxes shall be due and payable to the City Clerk monthly on or before the twentieth date of every month next succeeding each respective monthly period.
- (b) On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the City Clerk showing the gross rent, rent from permanent and exempt residents, taxable rents, amount of tax collected or otherwise due for the related period, and such other information as may be required by the City Clerk.
- (c) Payments received after the twentieth date of the month shall be assessed a penalty of ten percent of the amount due but not less than \$100.00 and interest at the rate of one percent per month or any part thereof.
- (d) The operator 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 payment of the amount due, if such 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 under O.C.G.A. § 48-8-50.

**Sec. 32-208 Determination of deficiency of amount.**

- (a) 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 City of Winterville by any person, he or she may compute and determine the amount to be paid upon the basis of any information within his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or more monthly periods.
- (b) The amount of the determination shall bear interest at the rate of one percent per month or fraction thereof from the due date of the taxes.
- (c) The City Clerk, or designee, shall give to the operator written notice of his or her 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 Clerk. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.
- (d) Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three years after the twentieth day of the calendar month following the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period should last expire.

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**Sec. 32-209 Determination upon failure to file return.**

- (a) If any person fails to make a return, the City Clerk shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total rentals in City of Winterville which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person 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 section 32-208(c).
- (b) The amount of the determination shall bear interest at the rate of one percent per month or fraction thereof from the twentieth day of the month of any portion thereof should have been returned, until the date of payment. In addition, a penalty of ten percent of the determination, but not less than \$100.00, shall also be assessed for failure to file a return.

**Sec. 32-210 Overpayment.**

Whenever the amount of any tax or interest has been paid more than once or has been erroneously or illegally collected or received by the City of Winterville under this chapter, it may be offset by the City Clerk. If the operator or person determines that he or she has overpaid or paid more than once, which fact has not been determined by the City Clerk, he or she will have three years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claim shall be audited. If the claim is approved by the City Clerk, the excess amount paid to the City of Winterville may be credited on any amounts then due and payable from the persons by whom it was paid or his or her administrators or executors.

**Sec. 32-211 Purchasers or successors of business.**

- (a) If any operator liable for any amount under this chapter sells out his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover the amount until the former owner produces a receipt from the City Clerk showing that he has been paid or a certificate stating that no amount is due.
- (b) If the purchaser of a business fails to withhold funds from the purchase price as required, he or she shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.

**Sec. 32-212 Legal action to collect.**

At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three 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 of Winterville to collect the amount delinquent, together with interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

**Sec. 32-212 Proceeds of the tax.**


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

- (2) If any section, provision or clause of any part of this ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to effect the portions of this ordinance not so held to be invalid, or the application of this ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this ordinance would have been adopted had such invalid portion not been included herein.
- (3) Any ordinances in conflict with this ordinance or are inconsistent with the provisions of this ordinance are hereby repealed.

This 14<sup>th</sup> day of November 2023.

MAYOR AND CITY COUNCIL OF WINTERVILLE

BY:



Dodd Ferrelle, Mayor

ATTEST:



Wendy Bond

Clerk, City of Winterville