

DRAFT - ORDINANCE TO PROVIDE FOR THE COLLECTION
OF A HOTEL-MOTEL TAX

Secs 17.1 – 17.17

CHAPTER 17 - LODGING TAX

17-1 - Definitions.

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

- a) "Person." An individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, non-profit corporation or cooperative non-profit 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 of Georgia, and any political subdivision of either thereof upon which the County is without power to impose the tax herein provided.
- b) "Operator." Any person operating a hotel in the unincorporated area of Jasper County, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, license to or any other person otherwise operating such hotel. In addition to the foregoing, for purposes of this Ordinance the owner of a residence that provides accommodations for rent or the agent of the owner is also considered an "operator".
- c) "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.
- d) "Occupancy." The use or possession, or the right to the use or possession, of any guest room in a hotel. Occupancy also means the right to the use or possession of the furnishings or to the services or accommodations accompanying the use and possession of the room.
- e) "Hotel." Any structure or any portion of a structure, including any lodging house, rooming house, dormitory, Turkish bath, bachelor club, or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention, or other buildings in which human beings are housed and detained

under legal restraint. In addition to the foregoing, for purposes of this Ordinance only, a residence in which accommodations are furnished for rent is also considered a "hotel".

- f) "Guest Room." A room, lodging, or accommodation occupied, or intended, arranged, or designed for occupancy, by one or more occupants, other than meeting rooms, intended, designed and use for such purpose. In addition to the foregoing, for purposes of this Ordinance only, a residence in which accommodations are furnished for rent is considered one (1) "guest room".
- g) "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.
- h) "Return." Any return filed or required to be filed as herein provided.
- i) "Finance Director." The Finance Director appointed by the Board of Commissioners of Jasper County, Georgia.
- j) "County." Jasper County, a political subdivision of the State of Georgia.
- k) "Tax." The tax imposed by this Ordinance.
- l) "Monthly Period." The calendar months of any year.

17-2- Imposition and Rate of Tax.

There is hereby levied and assessed, and there shall be paid a tax of five percent (5%) of the rent for every occupancy of a guest room in a hotel, tourist camp, tourist cabin, campground, or any other place, including residences, in which rooms, lodgings, or accommodations are furnished for value in the unincorporated area of Jasper County.

The tax imposed by this Ordinance shall be paid upon any occupancy on and after January 1, 2020 although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid, or charged or billed, or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period from July 7, 1987, and any monthly period thereafter.

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

17-3 - Persons Liable for Tax; Extinguishment of Liability.

Every person occupying a guest room in a hotel in the unincorporated area of Jasper County is liable for the tax. His liability is not extinguished until the tax has been paid to this County except that a receipt from an operator naming a place of business in this County or from an operator who is authorized by the Finance Director under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this Ordinance, regarded as an operator maintaining a place of business in the unincorporated area of Jasper County, which receipt is given to the occupancy pursuant to Section 17-4 hereof, is sufficient to relieve the occupancy from further liability for the tax to which the receipt refers.

17-4 - Collection of Tax by Operator; Receipt to Occupant; Rules for Collection Schedules.

Every operator maintaining a place of business in the unincorporated area of Jasper County, as provided in the next preceding section, and renting guest rooms in the unincorporated area of Jasper County, not exempted under Section 17-6 of this Ordinance shall, at the time of collecting rent from the occupant and on demand shall give to the occupant a receipt therefor. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent that such credits are incurred in accordance with the rate of tax owing on the amount thereof. The Finance Director shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax.

17-5- Unlawful Advertising Regarding Tax.

It is unlawful for any operator to advertise or hold out or state to the public or to any guest 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 rental of the guest room, or that, if added, it or any part thereof, will be refunded.

17-6- Exemptions.

No tax shall be imposed hereunder:

- a. Upon fees, rents, or charges made for continuous use of any guest rooms, lodgings, or accommodations after the first 30 days of continuous occupancy.
- b. Upon the fees or charges for any guest rooms, lodging or accommodations furnished for a period of one or more days for use by Georgia state or local government officials or employees when traveling on official business.
- c. Upon charges made for any guest rooms, lodgings, or accommodations provided to any persons who certify by affidavit that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty.

17-7 - Registration of Operator; Form and Contents; Execution; Certificate of Authority.

Every person engaging or about to engage in business as an operator of a hotel in the unincorporated area of Jasper County shall immediately register with the Finance Director of the County, on a form provided by the Finance Director. Persons engaged in such business must so register not later than fifteen (15) days after the date this Ordinance becomes effective and the tax is imposed as set forth in Section 17-2, but such privilege of registration after the imposition of such 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. Such registration shall set forth the same name under which such person transacts business or intends to transact business, the location of his place or places of business and such other information which would facilitate the collection of the tax as the Finance Director 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 executive officer or some person specifically authorized by the corporation to sign the registration. The Finance Director 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 name and location of the business to which it is applicable and shall prominently display therein so as to be seen and to come readily to the notice of all occupants and persons seeking occupancy. Such certificates shall be nonassignable and nontransferable and shall be returned immediately to the Finance Director upon the cessation of business at said location. Should the Finance Director deem it necessary, in order to facilitate initial registration hereunder of persons engaged in business, or prior to the date of imposition of tax as set forth therefor, other than those provided in this section. Such provisions shall be made to effect the purposes hereof.

17-8

- Determination, Returns and Payments.

- a. Due Date of Taxes. The tax imposed by this Ordinance shall become due and payable from the occupant at the time of occupancy of any Hotel in the unincorporated area of Jasper County. All amount of such taxes collected by any operator shall be due and payable to the Finance Director monthly on or before the twentieth day of every month next succeeding such respective monthly period as set forth in Subsection (b).
- b. Return; Time of Filing; Persons Required to File; Execution. On or before the twentieth day of the month following each monthly period shall be filed with the Finance Director in such form as Finance Director may prescribe, by every operator, liable for the payment of tax hereunder. For purposes of this section, a return shall be deemed filed if postmarked on the twentieth day, or, if the twentieth day falls upon a Holiday recognized by the State of Georgia or upon a Saturday or Sunday, then a return postmarked on the next business day shall be regarded as timely filed.
- c. Contents of Return. All returns shall show the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for the related period, and such other information as may be required by the Finance Director.

- d. Delivery of Return and Remittance. The person required to file the return shall deliver the return, together with the remittance of the Net Amount of Tax Due to the Finance Department at 126 W. Greene Street, Suite 18, Monticello, Georgia 31064.
- e. Collection Fee Allowed Operators. Operators 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 said amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions as provided in O.C.G.A. § 48-13-52, as now or hereafter amended.

17-9 - Deficiency Determinations.

- a. Recomputation of Tax; Authority to Make; Basis of Recomputation. If the Finance Director is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the County by any person, 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 than one Deficiency Determinations may be made of the amount due for one or more than one monthly period.
- b. Interest on Deficiency. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof from the twentieth day after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.
- c. Offsetting of Overpayments. In making a determination the Finance Director may offset overpayments, for a period or periods, against underpayments, for another period or periods, against penalties, and against the interest on underpayments. The interest on underpayments shall be computed in the manner set forth in Section 17-10.
- d. Penalty; Negligence or Disregard of Rules and Regulations. Reserved.

- e. Penalty for Fraud or Intent to Evade. If any part of the deficiency for which a deficiency determination is made due to fraud or an intent to evade any provisions of this Ordinance or other authorized rules and regulations, a penalty of fifty percent (50%) of the total amount of taxes due, exclusive of penalties, shall be added thereto in addition to the other penalties provided in this Ordinance.
- f. Notice of Finance Director's Determination; Service of. The Finance Director, or his 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 Finance Director. In case of service by mail of any notice required by this Ordinance, the service is complete at the time of deposit in the United States Post Office.
- g. Time Within Which Notice of Deficiency Determination to be Mailed. Except in the case of fraud, intent to evade this Ordinance or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three (3) 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 (3) years after the return is filed, whichever period should last expire.

17-10- Determination if No Return Made.

- a. Estimate of Gross Receipts. If any person fails to make a return, the Finance Director 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 the unincorporated area of Jasper County 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 to the possession of the Finance Director. Upon the basis of this estimate the Finance Director shall compute and determine the amount required to be paid the County, adding to the sum thus determined any applicable penalties. One or more determinations may be made for one or for more than one period.

- b. Manner of Computation; Offsets; Interest. In making a determination the Finance Director may offset overpayments for a period or penalties, and against the interest on the under payments. The interest on under payments shall be computed in the manner set forth in Section 17-9.
- c. Interest on Amount Found Due. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent (1%) per month, or fraction thereof, from the twentieth day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until the date of payment.
- d. Penalty for Fraud or Intent to Evade. If the failure of any person to file a return is due to fraud or an intent to evade this Ordinance or rules and regulations, a penalty of fifty percent (50%) of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the other penalties provided in this Ordinance.
- e. Giving of Notice; Manner of Service. Promptly after making his determination, the Finance Director shall give the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

17-11 - Penalties and Interest for Failure to Pay Tax.

- a. When any operator fails to make any return or to pay the full amount of the tax imposed by this Ordinance, a penalty shall be added to the tax in the amount of five percent (5%) or \$5.00, whichever is greater, if the failure is for not more than 30 days. An additional penalty of five percent (5%) or \$5.00, whichever is greater, shall be added for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation under this Section shall not exceed 25 percent (25%) or \$25.00 in the aggregate, whichever is greater. The penalty imposed herein shall be in addition to the tax, any other penalties, and interest on the unpaid tax as set forth in this Ordinance.
- b. The amount of the unpaid tax, exclusive of penalties, shall bear interest at the rate of one percent (1%) per month, or fraction thereof, from the twentieth day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until the date of payment.

17-12 Collection of Tax.

- a. Security, the Finance Director May Exact; Amount; Sale Of; Notice of Sale; Return of Surplus. The Finance Director whenever he deems it necessary to insure compliance with this Ordinance, may require any person subject thereto to deposit with him such security as the Finance Director may determine. The amount of the security shall be fixed by the Finance Director but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such a manner as the Finance Director deems proper, or five thousand dollars (\$5,000.00), whichever amount is the

lesser.

The amount of the security may be increased by the Finance Director subject to the limitations herein provided. The Finance Director may sell the security at public auction, with the approval of the Board of Commissioners if it becomes necessary so to do in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his address as it appears in the records of the Finance Director. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

- b. Action for Tax; Time for. At any time within three (3) years after any tax or 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 Finance Director may bring action in the courts of this State, or any other State, or of the United States in the name of the County to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto. The bringing of such an action shall not be a prerequisite for the issuance of a fi. fa. under the provisions of subsection (g) hereof.
- c. Duty of Successors or Assignees of Operator to Withhold Tax from Purchase Money. If any operator liable for any amount under this Ordinance sells out his business or quits the business, his successors or assigns shall withhold a sufficient portion of the purchase price to cover such amount until the former owner produces a receipt from the Finance Director showing that he has been paid or a certificate stating that no amount is due.
- d. Liability for Failure to Withhold; Certificate of Notice of Amount Due; Time to Enforce Successor's Liability. If the purchaser of a business fails to withhold purchase price as required in subsection (c), the purchaser shall become personally liable for the payment of the unpaid taxes. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the Finance Director shall either issue the certificate or mail notice to the purchaser at the address as it appears on the records of the Finance Director of the amount that must be paid as a condition of issuing the certificate. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out his business or at the time that the determination against the operator becomes final, whichever event occurs the later. Any purchaser that fails to withhold from the purchase price the amount of unpaid taxes or fails to pay any amount of such tax for which it becomes liable as a result of said purchase shall not be permitted to obtain an occupation tax certificate or alcoholic beverage license until all such taxes, including all penalties and interest, have been paid in full.
- e. Tax Credit, 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 County under this Ordinance, it may be offset as provided in Section 17-9. If the operator or person determines that he has overpaid or paid more than once, which fact has not been determined by the Finance Director he will have three (3) years from date of payment to file claim in writing stating the specific ground upon which claim is founded. The claim shall be audited by the Jasper County Finance Department. If the claim is approved by the Finance Director, the excess amount paid the County may be credited on any amounts then due and payable from, the person by whom it was paid, or his administrators or executors.

- f. Lien for Taxes. The lien of taxes collectible under the provisions of this Ordinance shall date from January 1 of the year in which the taxes become due, and the lien of such taxes shall be a special lien on the property upon which the same are due and a general lien against all property of the taxpayer owing same.
- g. County Administrator authorized to issue fieri facias. The Jasper County Administrator is hereby authorized to issue a fieri facias (fi. fa.) for execution and levy to satisfy the amount of any tax, penalty, or interest due but not paid under the provisions of this Ordinance.
- h. Eligibility for occupational tax and/or alcoholic beverage license. Any person who fails to pay the tax imposed herein to the County or fails to pay any amount of such tax required to be collected and paid to the County shall not be permitted to obtain or renew their occupation tax certificate or alcoholic beverage license until all such taxes, including all penalties and interest, have been paid in full.

17-13 Administrator of Ordinance.

- a. Authority of Finance Director. The Finance Director shall administer and enforce the provisions of this Ordinance for the levy and collection of the tax imposed by this Ordinance.
- b. Rules and Regulations. The Finance Director shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with the Ordinance, other laws or ordinances of Jasper County and the State of Georgia, or the constitution of this State or the United States for the administrator and enforcement of the provisions of this Ordinance and the collection of the taxes hereunder.
- c. Records Required from Operators, etc., Form. Every operator renting guest rooms in the unincorporated area of Jasper County to a person shall keep such records, receipts, invoices, and other pertinent papers in such form as the Finance Director may require.

- d. Examination of Records; Audits. The Finance Director or any person authorized in writing by the Finance Director 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 and determine the amount required to be paid.
- e. Authority to Require Reports; Contents. In administering the provisions of this Ordinance, the Finance Director may require the filing of reports by any person 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 Finance Director when required by the Finance Director and shall set forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the Finance Director may require.
- f. Disclosure of Business of Operators, etc., Limitation on Rule. The Finance Director or any person having an administrative duty under this Ordinance shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty, 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 or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this Ordinance, except in case of Judicial proceedings or other proceedings necessary to collect the tax hereby levied and assessed, or as required by the Georgia Open Records Act. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

17-14 Severability.

If any section, subsection, sentence, clause, phrase or a portion of

this Ordinance shall be declared invalid or unconstitutional by any court of competent jurisdiction, 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 by any court of competent jurisdiction, 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 invalidity shall not be construed to affect 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.

17-15 Violations.

Any person violating any of the provisions of this Ordinance shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in Section 1-11 of the Code of Ordinances of Jasper County. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Ordinance 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 Finance Director or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof shall be punished as aforesaid. Any person required to make, render, sign, or verify any report who makes any false or fraudulent report, with intent to defeat or evade the termination of an amount due required by this Ordinance to be made shall be deemed guilty of an offense and upon convictions thereof shall be punished as aforesaid.

17-16 Effective Date.

This Ordinance shall become effective upon the 1st day of January, 2020. Amendments to this Ordinance shall become effective upon the date specified by the Jasper County Board of Commissioners when said amendment is adopted.

17-17 Repealer Clause.

All ordinances or parts of ordinances in conflict with this Ordinance, and not preserved hereby, are hereby repealed.