

TEMPORARY ORDINANCE NO. 16-21

PERMANENT ORDINANCE NO. _____

AN ORDINANCE TO AMEND LANCASTER CODIFIED ORDINANCE PART ONE – ADMINISTRATIVE CODE, TITLE NINE – TAXATION, CHAPTER 185, OF THE CODIFIED ORDINANCES OF THE CITY OF LANCASTER, AND TO DECLARE AN EMERGENCY

WHEREAS, the General Assembly has made amendments and revisions to R.C. Chapter 5739 requiring amendment of L.C.O. Chapter 185.01 reference to R.C. Chapter 5739; and

WHEREAS, the definition of “Person” was added to clarify the definition of “Transient guests” in L.C.O. Section 185.02; and

WHEREAS, language in the application of the lodging tax required clarification in L.C.O. Section 185.03;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. That Part One – Administrative Code, Title Nine - Taxation, Chapter 185, is hereby amended pursuant to Exhibit “A” attached hereto.

SECTION 2. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, to comply with the provisions of Ohio Revised Code Chapter 5739 as amended by the Ohio General Assembly with the enactment of H.B. 197, and for purposes of clarification and administration, wherefore this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Finance Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2021 in the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council

CHAPTER 185
Lodging Tax

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| 185.01 Purpose and effective period. | 185.10 Actions to collect. |
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| 185.06 Lodging tax to be separately stated and charged. | 185.99 Penalty. |
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CROSS REFERENCES

Power to levy - see Ohio R.C. 5739.02(C)

185.01 PURPOSE AND EFFECTIVE PERIOD.

To provide funds to Fairfield County Visitors and Convention Bureau, there is hereby levied an excise tax of three percent (3%) on transactions occurring after July 1, 1994 by which lodging by a hotel or transient accommodations (as hereinafter defined) is or is to be furnished to transient guests, all as permitted and authorized by Ohio R.C. 5739.082(C)(1). The tax shall remain in effect until repealed. (Ord. 19-94. Passed 5-9-94.)

185.02 DEFINITIONS.

(a) As used in this chapter, the following words shall have the meaning ascribed to them as provided in this section, except as and if the context clearly indicates or requires a different meaning:

(1) "Administrator" means the individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter.

(2) "Board of Review" means the Board of Review created pursuant to Section 181.14.

(3) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping



accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(4) "Lodging tax" means the excise tax levied pursuant to this chapter.

(5) "Transient accommodation" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests in which four or less rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(6) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(7) "Person" as used in the definition of "Transient guests" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(87) "Vendor" means the person who is the owner or operator of the hotel or transient accommodation and who furnishes the lodging.
(Ord. 19-94. Passed 5-9-94.)

185.03 APPLICATION OF LODGING TAX.

(a) The lodging tax applies and is collectible at the time the lodging is furnished, regardless of the time when the charge for the lodging is paid. The tax shall not apply to transactions by which lodging is furnished to the Federal government or a State government, excluding Ohio, but only when the accommodations are paid for by the Federal or State government agency by direct billing or government agency credit card at the time of lodging. The Federal and State government exemption does not apply if the traveler pays for the accommodations personally. ~~the State or any of its political subdivisions.~~ All revenues received by the City from the lodging tax shall be deposited in a separate fund and, after deducting the real and actual costs of collecting and administering the lodging tax, shall be contributed to the Fairfield County Visitors and Convention Bureau.
(Ord. 19-94. Passed 5-9-94.)

(b) This section shall indicate that five percent (5%) shall include the actual cost for the administration of the tax collection, which five percent (5%) shall be deducted before distribution of the tax proceeds.
(Ord. 46-94. Passed 12-28-94.)

185.04 TRANSIENT GUEST TO PAY THE LODGING TAX.

(a) The lodging tax shall be paid by the transient guest to the vendor, and each vendor shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging. If for any reason the lodging tax due is not paid to the vendor, the Administrator may require the transient guest to pay such tax directly to the City.

(b) No exemption shall be granted except upon a claim therefore made at the time the lodging is furnished and, under penalty of perjury, upon a form and in the manner prescribed by the Administrator.

(c) No transient guest shall refuse to pay the full and exact lodging tax as required by this chapter, or present to the vendor false evidence indicating that the lodging as furnished is not subject to the lodging tax.

(d) For the purpose of the proper administration of this chapter, it shall be presumed that all lodging furnished by hotels or transient accommodations in the City to transient guests is subject to the lodging tax until the contrary is established.

(Ord. 19-94. Passed 5-9-94.)

185.05 RECORDS INSPECTION AND PRESERVATION.

Each vendor shall keep complete and accurate records of lodging furnished, together with a record of the lodging tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices and such other pertinent documents. If the vendor furnishes lodging not subject to the lodging tax, the vendor's records shall show the identity of the transient guest, if the sale was exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records shall be open during business hours to the inspection of the Administrator and shall be preserved for a period of five years, unless the Administrator in writing either consents to their destruction within that period or by order requires that they be kept longer.

(Ord. 19-94. Passed 5-9-94.)

185.06 LODGING TAX TO BE SEPARATELY STATED AND CHARGED.

(a) The vendor shall state and charge the lodging tax to the transient guest separately from the charge for the lodging and on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill or statement or charge made for occupancy issued or delivered by the vendor.

(b) No vendor shall advertise or state in any manner, whether directly or indirectly, that the lodging tax or any part thereof will be assumed or absorbed by the vendor, or that it will not be added to the amount charged for the lodging, or that, if added, any part will be refunded except in the manner provided in this chapter.

(Ord. 19-94. Passed 5-9-94.)

185.07 REGULATIONS FOR FILING RETURNS.

(a) Each vendor shall on or before the last day of the month make and file a return for the preceding month, on forms furnished by the Administrator, showing the receipts from lodging furnished, the amount of lodging tax due from the vendor to the City for the period covered by the return, and such other information as the Administrator deems necessary for the proper administration of the lodging tax. All returns shall be signed by the vendor or its authorized agent. The Administrator may extend the time for making and filing returns. Returns shall be filed by delivering or mailing the same to the Administrator together with payment of the full amount of lodging tax shown to be due thereon.

(b) The Administrator may authorize vendors whose lodging tax liability is not such as to merit monthly returns, as determined by the Administrator upon the basis of administrative costs of the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

(c) The Administrator may, if it is deemed necessary in order to ensure the payment of the lodging tax, require returns and payment to be made for other than monthly periods.

(d) The Administrator may order any vendor required to file monthly returns under this chapter who fails, on two consecutive months or on three or more months within a twelve-month period, to file such returns when due or to pay the lodging tax thereon, or any vendor authorized by the Administrator to file returns at less frequent intervals, who fails on two or more occasions within a twenty-four month period, to file such returns when due or pay the lodging tax due thereon, to furnish security in an amount equal to the average lodging tax liability of the vendor for a period of one year, as determined by the Administrator for a review of returns or other information pertaining to such vendor, which amount shall in no event be less than one hundred dollars (\$100.00). The security may be in the form of an advance payment to be applied to pay the lodging tax due on subsequent returns, or a corporate surety bond, satisfactory to the Administrator, conditioned upon payment of the lodging tax due with the returns from the vendor. The security shall be filed within ten days following the vendor's receipt of the notice from the Administrator of its requirements. A corporate surety bond filed under this section shall be returned to the vendor if, for a period of twelve consecutive months following the date the bond was filed, the vendor has filed all returns and remitted payment therewith within the time prescribed in this chapter.

(e) Each vendor shall file all claims for exemption from lodging tax filed by transient guests with the vendor during the reporting period with the return.

(f) The Administrator shall treat all returns and payments submitted by vendors as confidential and shall not release them except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State, the county, or the City, for official use only.

(g) All returns shall bear the mark of the date received and shall also reflect the amount of payment received therewith.
(Ord. 19-94. Passed 5-9-94.)

185.08 REFUND OF ERRONEOUS PAYMENTS.

The Administrator shall direct the City Treasurer to refund to a vendor or transient guest any amount erroneously paid. Applications for refund shall be filed with the Administrator, on the form so prescribed, within ninety days from the date it is ascertained that the amount paid was erroneous; provided, however, that in any event such applications for refund shall be filed with the Administrator within five years from the date of the erroneous payment. On filing of such application, the Administrator shall determine and certify the amount of the refund.
(Ord. 19-94. Passed 5-9-94.)

185.09 FAILURE TO REPORT AND COLLECT LODGING TAX;

DETERMINATION BY ADMINISTRATOR; FRAUDULENT REPORTS.

(a) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false, or fraudulent return, report or statement, or aid to abet another in the filing of any false or fraudulent return, report or statement.

(b) If any vendor fails or refuses to collect the lodging tax or to file a return or remit the lodging tax or any portion thereof, as required by this chapter, the Administrator shall proceed in such manner as he or she may deem best to obtain information on which to base an assessment of the lodging tax due. When the Administrator has obtained such information as he is able, he shall proceed to determine and assess against such vendor the tax.

(c) In case such determination is made, the Administrator shall serve notice upon the vendor of the amount so assessed, by personal service or by registered or certified mail. Such vendor may, within thirty days after the serving or mailing of such notice, apply in writing to the Administrator for a hearing on the correctness of the amount assessed. If the vendor does not apply within the time prescribed, the lodging tax determined by the Administrator shall become final and conclusive and immediately due and payable. If the vendor makes timely application, the Administrator shall give the vendor written notice, by personal service, or by registered or certified mail, of a hearing not less than five days in advance of the hearing, to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the lodging tax. At any such hearing, the vendor may appear and offer evidence why such specified tax should not be so fixed. After such hearing, the Administrator shall determine the proper amount of lodging tax due and shall thereafter give written notice to the vendor, by personal service, or by registered or certified mail, of such determination and the amount of the lodging tax. The amount determined to be due shall be payable after fifteen days.

(Ord. 19-94. Passed 5-9-94.)

185.10 ACTIONS TO COLLECT.

(a) Any lodging tax required to be paid by a transient guest under the provisions of this chapter shall be deemed a debt owed by the transient guest to the City. Any such tax collected by a vendor and not paid to the City shall be deemed a debt owed by the vendor to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

(b) The Administrator is authorized to institute civil law suits to collect delinquent lodging taxes due and owing the City by virtue of the provisions of this chapter. The Administrator is authorized to waive penalties, compromise any lodging tax liabilities and the right to accept waiver of State statutes of limitations.

(Ord. 19-94. Passed 5-9-94.)

185.11 INTEREST ON UNPAID LODGING TAX.

The lodging tax imposed and collected or required to be collected under the provisions of this chapter and remaining unpaid to the City after the tax becomes due shall bear interest at the rate of one and one-half percent (1-1/2%) per month or fraction thereof.

(Ord. 19-94. Passed 5-9-94.)

185.12 RULES AND REGULATIONS; APPEALS.

(a) The Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns.

(b) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

(Ord. 19-94. Passed 5-9-94.)

185.13 VIOLATIONS.

(a) No vendor, or any officer or employee of a vendor having control or supervision of or charged with the responsibility of collecting the lodging tax or filing returns shall:

(1) Willfully fail to file any return or report required to be filed by this chapter; or

(2) File or cause to be filed any incomplete, false or fraudulent return, report or statement; or

(3) Aid or abet another in the filing of any false or fraudulent return, report or statement; or

(4) Fail, neglect or refuse to collect the lodging tax or interest imposed by this chapter; or

(5) Fail, neglect or refuse to remit the lodging tax or any portion thereof, as required by this chapter; or

(6) Refuse to permit the Administrator or any duly authorized agent or employee to examine the hotel's or transient accommodation's books, records and papers relating to lodging provided to transient guests; or

(7) Fail to appear before the Administrator and to produce the hotel's or transient accommodation's books, records and papers relating to lodging provided to transient guests by the hotel or the transient accommodation upon order or subpoena of the Administrator; or

(8) Refuse to disclose to the Administrator any information with respect to lodging provided transient guests by the hotel or transient accommodation; or

(9) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or

(10) Fail to use ordinary diligence in maintaining complete and accurate records, invoices and other pertinent documents regarding lodging furnished and the lodging tax withheld, to knowingly give false information; or

(11) Attempt to do anything whatever to avoid the payment of the whole or any part of the lodging tax, or interest imposed by this chapter.

Shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months or both for each offense.

(b) No transient guest shall:

(1) Willfully fail, neglect or refuse to pay the lodging tax required by this chapter; or

(2) Make any incomplete, false or fraudulent representation indicating an exemption from the lodging tax.

Shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months or both for each offense.

(c) The failure of any vendor to collect the lodging tax or any transient guest to pay the lodging tax imposed by or pursuant to this chapter on any transaction subject to the lodging tax shall not excuse such vendor or transient guest from being personally liable for the amount of the lodging tax applicable to the transaction. The Administrator may make an assessment against either the vendor or transient guest, as the facts may require, based upon any information in the possession of the Administrator.

(d) The failure of any vendor corporation, required to file returns and to remit lodging tax due to the City under the provisions of this chapter shall not excuse any of its officers or employees having control of or charged with the responsibility of filing returns and remitting lodging tax due under the provisions of this chapter from being held personally liable for such failure.

(e) The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit lodging tax due under the provisions of this chapter. The sum due for such liability may be collected by assessment in the manner provided in this chapter.

(f) All prosecutions under this section must be commenced within three (3) years from the time of the offense complained of except in the case of failure to collect the lodging tax or failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be six (6) years from the date the return was due or the date the false or fraudulent return was filed.

(Ord. 19-94. Passed 5-9-94.)

185.14 COLLECTION OF LODGING TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of lodging taxes is concerned until repealed according to the law and insofar as the collection of lodging taxes levied hereunder and actions or proceedings for collecting any lodging tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such lodging taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection

of such lodging taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 185.10 and 185.13.

(b) Monthly returns due for all or any part of the last effective month of this chapter shall be due on the date provided in Section 185.07 as though the same were continuing.
(Ord. 19-94. Passed 5-9-94.)

185.99 PENALTY.

Whoever violates any provision of Section 185.13 shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both, for each offense.
(Ord. 19-94. Passed 5-9-94.)