

ORDINANCE NO. 2019-34

Introduced by Trey Hardy

AN ORDINANCE AMENDING SECTIONS 189.02-DEFINITIONS, 189.03-IMPOSITION OF TAX, 189.07-STATEMENT AND CHARGE OF TAX, AND 189.08-REGISTRATION OF CHAPTER 189 - LODGING TAX OF THE CITY OF HURON CODIFIED ORDINANCES AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HURON, OHIO:


SECTION 1. That Sections 189.02- Definitions, 189.03-Imposition of Tax, 189.07-Statement and Charge of Tax, and 189.08-Registration of Chapter 189 – Lodging Tax of the Codified Ordinances of the City of Huron which currently reads as follows: (refer to Exhibit “A” attached), shall be and hereby are amended.

SECTION 2. That Sections 189.02- Definitions, 189.03-Imposition of Tax, 189.07-Statement and Charge of Tax, and 189.08-Registration of Chapter 189 – Lodging Tax of the Codified Ordinances of the City of Huron are hereby amended to read as follows: (refer to Exhibit “B” attached).

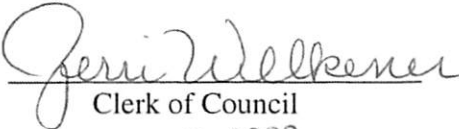
SECTION 3. That Sections 189.02- Definitions, 189.03-Imposition of Tax, 189.07-Statement and Charge of Tax, and 189.08-Registration of Chapter 189 – Lodging Tax of the Codified Ordinances of the City of Huron, as existing prior to the adoption of this Ordinance shall be, and the same hereby are, repealed.

SECTION 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including O.R.C. §121.22.

SECTION 5. This ordinance will take effect upon passage and shall not be subject to referendum per Sec. 3.07 of the Charter for the City of Huron.



Sam Artino, Mayor

ATTEST: 
Clerk of Council

ADOPTED: 10 MAR 2020

**CHAPTER 189
LODGING TAX**

189.1	Purpose.	189.11	Penalties and interest.
189.2	Definitions.	189.12	Failure to collect; assessments; refunds.
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189.4	Exemptions.	189.14	Collection.
189.5	False evidence of tax-exempt status.	189.15	Collection of tax after termination of chapter.
189.6	Payment by transient guest.	189.16	Disposition of funds.
189.7	Statement and charge of tax.	189.17	Separability.
189.8	Registration.	189.99	Violations; penalty.
189.9	Records.		
189.10	Returns and payment.		

CROSS REFERENCES

State Authority- see Ohio R.C. 5739.08
City Income Tax - see Ch. 85

189.1 PURPOSE.

To provide revenues for the general fund to be used for municipal purposes including but not limited to the promotion of tourism in the City and all matters related thereto, this lodging tax is established.

189.2 DEFINITIONS.

As used in this chapter, the following words shall have the meaning ascribed to them in this Section, except as and if the context clearly indicates or requires a different meaning.

- (a) "Administrator" means the individual designated as Tax Administrator pursuant to Chapter 185, who is to administer and enforce the provisions of this chapter.
- (b) "Board of Review" means the Board of Review created by and constituted as provided in Section 185.12.
- (c) "City" means the City of Huron, Ohio.
- (d) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.
- (e) "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 (including but not limited to motels and bed and breakfast establishments).

- (f) "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms or space or portion thereof, in any hotel for dwelling, lodging or sleeping purposes. The use or possession or the right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses, or has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.
- (g) "Operator" means any person who is the proprietor of a hotel, Dwelling Unit, Residential Premises, or any other residential property that is being used or is otherwise made available for rent to a Transient Guest, whether in the capacity of owner, lessee, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than an employee, the managing agent shall be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (h) "Person" means a "person" as defined in Section 185.02(v).
- (i) "Residential Premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances unit, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant.
- (j) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or service of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.
- (k) "State" means the State of Ohio.
- (l) "Transient Guests" means persons occupying a room or rooms, Dwelling Unit, Residential Premises or other property used for sleeping accommodations for less than 30 consecutive days.
- (m) "Transient Occupancy Registration Certificate" means the certificate issued pursuant to Chapter 1369 of the Codified Ordinances.
- (n) "Transient Rental Property" has the same meaning as Chapter 1369 of the Codified Ordinances. Specifically, the term means any Dwelling Unit, Residential Premises, or any other residential property being utilized or otherwise made available for rent to Transient Guests within the City.

189.3 IMPOSITION OF TAX.

- (a) For the purpose of providing revenue for the purpose set forth in Section 189.01, an excise tax is levied on transactions by which lodging by a hotel or Transient Rental Property is made available for rent, use, or is to be furnished to Transient Guests.

- (b) The tax is 3% on all rents paid or to be paid by Transient Guests for the use of a Hotel, any Hotel room or rooms, or any Transient Rental Property. Such tax constitutes a debt owed by the Transient Guest to the City, which debt is extinguished only by payment to the operator as trustee for the City, or to the City. The tax applies and is collectible at the time the lodging is furnished regardless of the time when the rent is paid. The tax shall be assessed on all rents paid or to be paid by Transient Guests for use of any Transient Rental Property beginning May 1, 2020.
- (c) For the purpose of the proper administration of this Chapter and to prevent the evasion of the tax, it is presumed that all lodging furnished by hotels in the City to Transient Guests is subject to the tax until the contrary is established.

189.4 EXEMPTIONS.

- (a) No tax shall be imposed under this chapter on:
 - (1) Rents not within the taxing power of the City under the Constitution or laws of the State or the United States of America; or
 - (2) Rents paid by the City or any of its political subdivisions.
- (b) No exemption claimed under (a) above shall be granted except on a claim therefor made at the time the rent is collected and under penalty of perjury on a form prescribed by the Administrator. All claims of exemption shall be made in the manner prescribed by the Administrator.

189.5 FALSE EVIDENCE OF TAX-EXEMPT STATUS.

No Transient Guest shall refuse to pay the full tax as required by this chapter or present to the operator false evidence indicating that the lodging as furnished is not subject to the tax.

189.6 PAYMENT BY TRANSIENT GUEST.

- (a) The tax imposed by this chapter shall be paid by the Transient Guest to the Operator, and each Operator shall collect from the Transient Guest the full and exact amount of the tax payable on each taxable lodging.
- (b) If the transaction is claimed to be exempt, the Transient Guest must furnish to the Operator, and the Operator must obtain from the Transient Guest, a certificate specifying the reason that the sale is not legally subject to the tax. If no certificate is obtained, it shall be presumed that the tax applies.

189.7 STATEMENT AND CHARGE OF TAX.

- (a) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and on every evidence of occupancy or any bill or statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant Transient Guest to the Operator as trustee for and on account of the City and the Operator shall be liable for the collection thereof and for the remittance of the tax to the Administrator.
- (b) No operator of a Hotel, Dwelling Unit, Residential Premises, or any other property being utilized or otherwise made available for rent to Transient Guests shall advertise or state in any manner, whether 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 rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

189.8 REGISTRATION.

Within 30 days after the effective date of Ordinance 2005-2, passed January 24, 2005 or within 30 days after commencing business, whichever is later, each operator of any hotel renting lodging to transient guests shall register the hotel with the Administrator and obtain a Transient Occupancy Registration Certificate, which Certificate shall be at all times posted in a conspicuous place on the premises.

189.9 RECORDS.

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

189.9 RETURNS AND PAYMENT.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period that may be established by the Administrator, make a return to the Administrator, on forms provided by the Administrator, of the total rents charged and received and the amount of tax collected by transient occupancies. All claims for exemption from tax filed by transient guests with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Administrator. The Administrator may establish shorter reporting periods for any Certificate holder if the Administrator deems it necessary in order to ensure collection of the tax, and the Administrator may require further information in the return if such information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this Chapter shall be held in trust for the account of the City until payment is made to the Administrator. All returns and payments submitted by each operator shall be treated as confidential by the Administrator and shall not be released by the Administrator except on order of a court of competent jurisdiction or to an officer or agent of the United States of America, the State, the County of Erie or the City for official use only.

189.10 PENALTIES AND INTEREST.

- (a) Original delinquency. Any operator who fails to remit any tax imposed by this Chapter within the time required shall pay a penalty equal to 10% of the amount of the tax, in addition to the tax.
- (b) Continued delinquency. Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance became delinquent shall pay a second delinquency penalty equal to 10% of the amount of the tax and previous penalty in addition to the tax and the 10% penalty first imposed. An additional penalty equal to 10% of the total tax and penalty of the previous 30-day period shall be added for each successive 30-day period that the occupant remains delinquent, but the accumulated penalty shall not exceed 100% of the delinquent remittance.
- (c) Fraud. If the Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to 25% of the amount of the tax shall be added thereto, in addition to the penalties stated in (a) and (b) above.

- (d) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 1.0% per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) Penalties during pendency of hearing or appeal. No penalty provided under the terms of this Chapter shall be imposed during the pendency of any hearing provided for herein or during the pendency of any appeal to the Board of Review. (Ord. 2005-2. Passed 1-24-05.)

189.11 FAILURE TO COLLECT; ASSESSMENTS; REFUNDS.

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due and shall have the same investigative powers described in Section 185.09(a) and (b). As soon as the Administrator procures such facts and information as the Administrator is able to obtain on which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect it and to make such report and remittance, the Administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the operator's last known place of business. Such operator may, within ten days after the serving or mailing of such notice, make application in writing to the Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Administrator shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After the hearing, the Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided by Section 189.13. No assessment shall be made against an operator for any tax, interest or penalty imposed by or pursuant to this Chapter more than four years after the due date for the remittance of the tax imposed by this Chapter or the date the return of such tax is filed, whichever is later. No statute of limitation on assessments exists where (i) the Administrator has substantial evidence of amounts of tax collected by an operator from transient guests that were not returned to the Administrator or (ii) the operator failed to file a return as required by this Chapter. A claim for refund to the Administrator of any tax illegally or erroneously paid, collected and/or remitted shall be made in the manner, and within the time, prescribed by Ohio R.C. 5739.07, including any amendments or successor provisions thereto. (Ord. 2005-2. Passed 1-24-05.)

189.13 APPEALS.

Any operator aggrieved by any decision of the Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Review by filing a notice of appeal with it within ten days of the serving or mailing of the determination of tax due. The Board of Review shall fix a time and place for hearing the appeal, and shall give notice in writing to such operator at the last known place of business of the operator. The findings of the Board of Review shall be final and conclusive and shall be served on the appellant in the manner prescribed above

for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

189.14 COLLECTION.

Any 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 tax collected by an operator that has not been paid to the City shall be deemed a debt owed by the operator 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.

189.15 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

This chapter shall continue effective insofar as the levy of the tax is concerned until revoked, and insofar as the collection of the tax levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Section 189.99.

189.16 DISPOSITION OF FUNDS COLLECTED.

By the passage of this chapter, it is the expressed intention of Council to place the funds derived from the imposition of the tax herein imposed in the general fund, such funds to be used as set forth in Section 189.01.

189.17 SEPARABILITY.

If any sentence, clause, section or part of this chapter or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(Ord. 2005-2. Passed 1-24-05.)

189.99 VIOLATIONS; PENALTY.

Whoever violates or fails to comply with any of the provisions of Sections 189.01 through 189.17 for which no penalty is otherwise provided is guilty of a minor misdemeanor. Each day the violation continues shall be deemed a separate violation.