

CITY OF CLAYTON, OHIO

ORDINANCE NO. O – 11 - 23 - 24

AN ORDINANCE APPROVING AMENDMENT OF THE CLAYTON CODIFIED ORDINANCES IN ORDER TO ADD A NEW CHAPTER 185 ENTITLED, “HOTEL LODGING EXCISE TAX”

WHEREAS, Ohio Revised Code §5739.08 states, in relevant part, “The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to §5739.02 and §5739.01(B) does not prevent a municipal corporation from levying an excise tax for any lawful purpose not to exceed three percent (3%) on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied under §5739.02.”; and

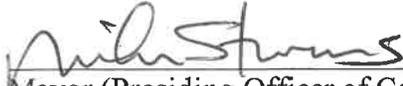
WHEREAS, Council desires to amend the Clayton Codified Ordinances in order to add a new Chapter 185 thereto entitled, “Hotel Lodging Excise Tax”, as delineated in the attached **Exhibit A**.

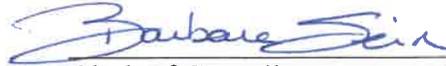
NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the Clayton Codified Ordinances are hereby amended to add a new Chapter 185 thereto entitled, “Hotel Lodging Excise Tax”, as delineated in the attached **Exhibit A**.
2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.
3. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on November 2, 2023 and November 16, 2023.
4. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

ADOPTED BY COUNCIL ON NOVEMBER 16, 2023.

AUTHENTICATION:


Mayor (Presiding Officer of Council)


Clerk of Council

APPROVED AS TO FORM:


Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Register Herald

Date of publication

November 22, 2023


CLERK

CHAPTER 185
Hotel Lodging Excise Tax

185.01	Authority to levy tax, purposes of tax; rate.	185.06	Records.
185.011	Authority to levy tax.	185.07	Reporting and remitting.
185.012	Purpose of tax; rate.	185.08	Refund.
185.013	Allocation of funds.	185.09	Penalties and interest.
185.02	Effective date.	185.10	Violations.
185.03	Definitions.	185.11	Actions to collect.
185.04	Exemptions.	185.12	Appeals.
185.05	Registration	185.13	Separability.

185.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

185.011 AUTHORITY TO LEVY TAX.

The excise tax on lodging established by this Chapter 185 is authorized by Article XVIII, Section 3 of the Ohio Constitution. The excise tax established by this Chapter 185 shall be known as the lodging tax and is deemed to be levied in accordance with, and to be consistent with the provisions and limitations of Ohio Revised Code Chapter 5739.

185.012 PURPOSE OF TAX; RATE.

To provide funds for the purposes of general municipal operations and functions including, but not limited to, the costs of personnel, maintenance, new equipment, extensions and improvements of municipal services and facilities and capital improvements of the City of Clayton, an excise tax is hereby levied and imposed upon each transaction in the City of Clayton by which lodging by a hotel, motel, or transient accommodation(s) (as hereinafter defined) is or is to be furnished to transient guest(s) at the rate of three percent (3%) of the amount paid or to be paid for each such transaction on or after January 1, 2024.

185.013 ALLOCATION OF FUNDS.

The proceeds of the three percent (3%) excise tax levied on lodging herein shall be paid to the City of Clayton's General Fund.

185.02 EFFECTIVE DATE.

All provisions of this Chapter 185 shall apply to taxable years beginning January 1, 2024 and all succeeding taxable years.

185.03 DEFINITIONS.

Any term used in this Chapter that is not otherwise defined in this Chapter has the same meaning as when used in a comparable context in Ohio Revised Code Chapter 5739 unless a different meaning is clearly required. When used in this Chapter and unless otherwise distinctly expressed, the following words and phrases shall have the meanings set out herein:

- (1) "ADMINISTRATOR" means the Finance Director or a person or entity retained by the City of Clayton to administer this Chapter.
- (2) "BOARD OF REVIEW" means the Local Board of Tax Review created pursuant to Section 183.18 of the Clayton Codified Ordinances.
- (3) "CONSUMER" means the person, whether or not a guest, who pays or is obligated to pay for the lodging of transient guest(s).
- (4) "EXCISE TAX" means the lodging tax imposed by this Chapter.
- (5) "HOTEL" or "MOTEL" 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 accommodations of such guests, whether the rooms are in one or several structures.
- (6) "PERSON" means individuals, partnerships, corporations, receivers, assignees, trustees in bankruptcy, estates, firms, associations, joint ventures, clubs, societies, or any combination(s) of the foregoing in any form.
- (7) "TRANSIENT ACCOMMODATION(S)" means and includes the following:
 - a. Every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guest(s) in which four or less rooms are used for the accommodation of such guest(s), whether such rooms are one or several structures;
 - b. "Overnight Lodging, Bed & Breakfast", "Overnight Lodging, Boutique Hotel", "Overnight Lodging, Resort", and "Overnight Lodging, Short Term Rental" as defined in Clayton Codified Ordinance Section 1181.02.
- (8) "TRANSIENT GUEST(S)" means person(s) occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.
- (9) "VENDOR" means the person who is the owner or operator of a hotel or transient accommodation(s) and who furnishes the lodging.

185.04 EXEMPTIONS.

No excise tax shall be imposed under this Chapter upon lodging transactions not within the taxing power of the City of Clayton under the Constitution or laws of Ohio or the United States; or upon lodging transactions paid by the State of Ohio or any of its political subdivisions. Further, entities holding Federal tax-exempt status remain exempt from the application of this Chapter.

If any transaction is claimed to be exempt from the excise tax, the consumer must furnish to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason the transaction is not legally subject to the excise tax. If no certificate is furnished or obtained within the period for filing the return for the period in which such transaction is reportable, it shall be presumed the excise tax applies.

185.05 REGISTRATION.

Within thirty (30) days after the effective date of this Chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel, motel, or transient accommodation(s) as defined herein and located within the City of Clayton, shall register same upon form(s) provided by the Administrator, with the City of Clayton.

185.06 RECORDS.

(1) The burden of proof rests upon each vendor to show what part, if any, of their gross receipts are not taxable hereunder, and for such purpose each vendor shall maintain and keep complete and accurate records of lodging furnished and all lodging transactions, together with a record of the excise tax collected thereon, which shall include:

(a) Primary records such as all guest and lodging transaction registers, invoices, statements or bill(s), lodging transaction payments and/or refunds thereon, room rate sheets or cards of prices per day of each room as required by ORC Section 3731.16, receipts of income, tax returns, Ohio sales tax returns, and tax returns to local subdivisions having a lodging excise tax identical or substantially similar to the tax imposed hereby, as filed by the vendor, exemption certificates, tax payment receipts, cash register tapes and all other pertinent documents; and

(b) Secondary records such as bank deposit(s) receipts and day books, journals, or any other records of accumulated data by the vendor, which must be supported by complete detailed records from which such data was accumulated.

(2) Guest and lodging transaction invoices, statements or bills and cash register tapes for taxable lodging transaction(s) must have the total taxable amount and the tax charged and/or collected separately stated thereon, which amounts are to be accumulated and recorded in a secondary record.

(3) Lodging transaction invoices, statements or bills must also clearly show the length of stay, in terms of consecutive days, for each guest.

(4) All such records must be preserved for a period of four (4) years unless the Administrator consents, in writing, to its destruction within that period, or by order requires that they be kept for a longer period; provided; however, that any such records need no longer be preserved after an assessment for additional tax has been made and paid, with all penalties and interest thereon, for the period involved in such assessment, but a copy of such paid assessment shall be maintained for four (4) years following the period included in such assessment.

(5) All such records and documents shall be open during regular business hours to inspection by the Administrator who may review, investigate, examine and audit any of such records of any vendor from time to time to determine if the proper tax has been returned and remitted. In connection with such investigation, the Administrator may interview the vendor, the vendor's agents and employees, and take written statements therefrom under oath. If the investigation of such complete records reveals that any tax or additional tax has not been properly remitted, the Administrator shall make an assessment of such tax or additional tax in the manner provided in paragraph (6) hereof, infra, provided that if the Administrator is satisfied that the failure to return said tax or additional tax when due was caused by unintentional or immaterial error, mistake, or omission, the Administrator shall not impose the penalty.

(6) If any vendor fails to maintain complete primary sales records, accurately reflecting the total amounts subject to the tax and of the tax due thereon, or which may be utilized in verifying the accuracy of the figures reflected in secondary records and/or reported on tax returns filed hereunder, the Administrator will use one of the following methods for such verification:

(a) Determine the total amount subject to the excise tax, less refunds when the full tax has also been refunded with information in their possession.

(b) Determine taxable and non-taxable amount(s), or the ratio of taxable amount(s) to total amount(s), or both, as the facts may require, based upon any information in its possession. The above-described determinations may be based upon a sampling or test checks of the vendor's business activity for a representative period, or other information relating to the rental of rooms made by such vendor. The Administrator may make the same determination where the facts in its possession reasonably lead it to believe that the amount of tax required to be collected is or should be greater than the amount remitted by the vendor.

(G) If any vendor:

(a) Fails to maintain complete records, as required hereby; or

(b) Fails or refuses to register with the City of Clayton to inspect any records; or

(c) Refuses to permit the Administrator to sample or test check business activity; or

(d) Having filed a return or returns, misrepresents, or fails to disclose, any material fact or figure thereon; or

(e) Having collected the tax, fails to remit the same when due; or

(f) Fails to remit the correct amount of tax or interest thereon when due; or

(g) Fails to file a full and complete return when due, then the Administrator shall determine the proper amount of tax by any of the means set forth herein above; the tax as so determined will be deemed to be the tax collected by such vendor during the entire period of time under review; and the Administrator shall make an assessment of such amount of tax based upon such determination, less the tax paid during such period, if any, (a) plus interest thereon at the rate of six (6%) percent per annum, computed from the time the amounts of tax assessed should have been paid; (b) plus a penalty of fifteen (15%) percent of the amount of the assessment of tax.

(7) No assessment, however, shall be made or issued against a vendor or consumer for any tax more than four (4) years after the return day for the period in which the taxable transaction giving rise to the assessment of the tax occurred, or after the return for said period was filed, whichever is later.

(8) All returns, documents and payments submitted by each vendor, all records and other documents examined, and all information or knowledge of any vendor's business obtained by the Administrator, shall be treated as confidential by the Administrator and shall not be released by the City except upon order of a court of competent jurisdiction or to a duly authorized officer or agent of the Federal government, the State of Ohio, or any municipal corporation or township in Montgomery County which levies a tax pursuant to ORC Section 5739.024(B).

185.07 REPORTING AND REMITTING.

The excise 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 vendor shall collect the full and exact amount of the tax payable on each taxable lodging. All taxes collected by vendors pursuant to this Chapter shall be held in trust for the account of the City until payment thereof is made to the City. Each vendor shall, on or before the tenth day of the month, for the preceding month's business, or at the close of any longer reporting period which may be established by the Administrator, make a return to the City on forms provided by the City of the total lodging transaction amounts charged and received and the amount of excise tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the City.

All claims for exemption from the excise tax filed by occupants with the operator during the reporting period shall be filed with the return.

If for any reason the excise tax due is not paid to the vendor, the Administrator may require the transient guest to pay such tax directly to the City. No transient guest shall refuse to pay the full and exact excise tax as required by this Chapter, or present to the vendor false evidence indicating the lodging as furnished is not subject to the excise tax. For the purpose of proper administration of this Chapter and to prevent evasion of the excise tax, it shall be presumed that all lodging furnished by hotels, motels, or transient accommodation(s) in the City of Clayton to transient guests is subject to the excise tax until the contrary is established.

The Administrator may establish shorter reporting periods for any vendor if deemed necessary to ensure collection of the tax, and 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 returns and payments submitted by each vendor shall be treated as confidential by the City and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of Ohio, the County of Montgomery, or the City for official use only.

185.08 REFUND.

The Administrator shall cause a refund to issue to a vendor or transient guest any excise tax amount erroneously paid. Applications for refund shall be filed with the Administrator, on the form so prescribed, within ninety (90) days from the date it is ascertained that the amount paid was erroneous; provided, however, that in any event such application for refund shall be filed with the Administrator within five (5) years from the date of the erroneous payment. On filing of such application, the Administrator shall determine and certify the amount of refund, if any.

185.09 PENALTIES AND INTEREST.

(1) Original Delinquency. Any vendor who fails to remit any tax imposed by this Chapter within the time required shall pay a penalty equal to ten percent (10%) of the amount of the tax, in addition to the tax.

(2) Continued Delinquency. Any vendor who fails to remit any delinquent remittances on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty equal to ten percent (10%) of the amount of the tax and previous penalty in addition to the tax and the ten percent (10%) penalty first imposed. An additional penalty equal to ten percent (10%) of the total tax and penalty of the previous thirty (30) day period shall be added for each successive thirty (30) day period that the account remains delinquent.

(3) Fraud. If the City of Clayton determines ~~that~~ the nonpayment of any remittance due under this Chapter is due to fraud, a penalty equal to twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (1) and (2) hereof.

(4) 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 one and one half percent (1 ½%) 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.

185.10 VIOLATIONS.

- (1) No vendor, or any officer or employee of a vendor having control or supervision of or charged with the responsibility of collecting the excise tax or filing returns shall:
 - (a) Willfully fail to file any return or report required to be filed by this Chapter; or
 - (b) File or cause to be filed any incomplete, false, or fraudulent return, report, or statement; or
 - (c) Aid or abet another in the filing of any false or fraudulent return, report, or statement; or
 - (d) Fail, neglect, or refuse to collect the excise tax or interest imposed by this Chapter; or
 - (e) Fail, neglect, or refuse to remit the excise tax or any portion thereof, as required by this Chapter; or
 - (f) Refuse to permit the Administrator or any duly authorized agent or employee to examine the vendor's books, records, and papers relating to lodging provided to transient guests; or
 - (g) Fail to appear before the Administrator and to produce the vendor's books, records, and papers relating to lodging provided to transient guests upon order or subpoena of the Administrator; or
 - (h) Refuse to disclose to the Administrator any information with respect to lodging provided to transient guests; or
 - (i) Fail to comply with the provisions of this Chapter or any order or subpoena of the Administrator authorized hereby; or
 - (j) Fail to use ordinary diligence in maintaining complete and accurate records, invoices, and other pertinent documents regarding lodging furnished and the lodging tax withheld; or
 - (k) Knowingly give false information related to lodging furnished and/or the lodging tax withheld; or
 - (l) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the lodging tax, or interest imposed by this Chapter.

Whoever violates this Section 185.10 shall be guilty of a minor misdemeanor and shall be fined not more than \$150.00.

185.11 ACTIONS TO COLLECT.

Any excise 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 excise 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 such provisions of this Chapter shall be liable in an action brought in the name of the City for recovery of such amount.

The Administrator is authorized, in conjunction with the City Law Department, to institute civil law suits to collect delinquent excise taxes due and owing the City by virtue of the provisions of this Chapter. The Administrator is authorized to waive penalties and compromise excise tax liabilities.

185.12 APPEALS.

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 (30) 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.

185.13 SEPARABILITY.

In the event any section or provision of this Chapter shall be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of this Chapter as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.