

CHAPTER 118: LODGING TAX

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§ 118.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GROSS RECEIPTS. The total amount received, in money or otherwise, for lodging as measured by the rate for the lodging.

HOTEL, MOTEL AND TOURISM COURT. Every building or structure or enclosure, or any part thereof, kept, used as, maintained as, or advertised as, or held out to the public to be an enclosure where sleeping accommodations are furnished to the public and furnishing accommodations for periods of less than one week.

LODGER. The person obtaining lodging from an operator.

LODGING. The furnishing for a consideration of lodging by a hotel, motel, rooming house, tourist court, resort, bed and breakfast, public/private campground except where lodging shall be for a continuous period of 30 days or more to the same lodger. The furnishing of rooms owned by religious, educational or nonprofit organizations for self-sponsored activities shall not constitute **LODGING** for purposes of this chapter.

LODGING TAX. A tax imposed by the city of 3% of the gross receipts from the furnishing for consideration of lodging.

MUNICIPAL CAMPGROUND. Property owned by the city used to provide temporary lodging for the public while fishing, hunting, vacationing, or touring in tents, campers, or other portable shelters owned by such members of the public.

OPERATOR. The person who is the proprietor of the lodging facility, whether in the capacity of owner, lessee, sublessee, licensee or any other capacity.

PERSON. Any person, persons, firm, corporation, partnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers and agents thereof.

RESORT. Any building, structure, or enclosure or any part thereof, located on, or on property neighboring any lake, stream, or skiing or hunting area for purposes of providing convenient access thereto, kept, used, maintained or advertised as, or held out to the public to be an enclosure where sleeping accommodations are furnished to the public, and primarily to those seeking recreation, for periods of one day, one week, or longer, and having for rent five or more cottages, rooms or enclosures. (Ord. 1117.05, passed 12-12-05)

§ 118.02 IMPOSITION OF LODGING TAX.

Pursuant to M.S. § 469.190, there is hereby imposed a lodging tax on the gross receipts from the furnishing for consideration of lodging within the city. The lodging tax shall be at the rate of 3% of the gross receipts from the furnishing for consideration of lodging. In no case shall the lodging tax imposed by this chapter upon an operator exceed the amount of lodging tax that the operator is authorized and required by this chapter to collect from the lodger. (Ord. 1117.05, passed 12-12-05)

§ 118.03 EXCEPTIONS AND EXEMPTIONS.

(A) *Exceptions.* The lodging tax shall not apply to the furnishing for consideration of lodging for a continuous period of 30 days or more to the same lodger.

(B) *Exemptions.* An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted except upon a claim made at the time the rent is collected. Such claim shall be made in writing and under penalty of perjury on forms provided by the city. All such claims shall be forwarded to the city when the returns and collections are submitted as required by this chapter. (Ord. 1117.05, passed 12-12-05)

§ 118.04 ADVERTISING NO LODGING TAX.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the lodging tax or any party thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. (Ord. 1117.05, passed 12-12-05)

§ 118.05 COLLECTIONS.

Each operator shall collect the lodging tax imposed by this chapter at the time the rent is paid. The lodging tax collected shall be deemed to be held in trust by the operator for the city. The amount of lodging tax shall be separately stated from the rent charged for the lodging and those persons paying the lodging tax shall receive a receipt of payment from the operator. (Ord. 1117.05, passed 12-12-05)

§ 118.06 PAYMENT AND RETURNS.

(A) Every person who collects lodging tax shall pay the lodging tax collected to the city monthly on or before the 20th of the month in which the lodging tax is collected. At the time of payment, such person shall submit a return upon such forms and containing such information as the City Clerk may require. At the minimum, the return shall contain the following minimum information:

- (1) The total amount of consideration collected for lodging during the period covered by the return;
- (2) The total amount of exceptions/exemptions;
- (3) The amount of lodging tax required to be collected and due for the period;
- (4) The signature of the person filing the return or that of his or her agent duly authorized in writing;
- (5) The period covered by the return;
- (6) The amount of uncollectible consideration charged subject to the lodging tax.

(B) The operator may offset against the lodging taxes payable with respect to any reporting period, the amount of lodging tax that became uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible. (Ord. 1117.05, passed 12-12-05)

§ 118.07 PROCESSING RETURNS.

The City Clerk shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The lodging tax computed on the basis of such examination shall be the lodging tax due. If the lodging tax due is found to be greater than paid, such excess shall be paid to the city within ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the lodging tax paid is greater than the lodging tax found to be due, the excess shall be refunded to the person who paid the lodging tax to the city within ten days after determination of such refund. (Ord. 1117.05, passed 12-12-05)

§ 118.08 FAILURE TO FILE RETURN.

The City Clerk shall notify any operator of a facility who fails to file a return or who files an incorrect, false or fraudulent return of such fact. Such operator shall file such return or corrected return within five days of the receipt of such written notice and pay any lodging tax due thereon. If such persons shall fail to file such return or corrected return, the City Clerk shall make a return or corrected return for such person from such knowledge and information as the City Clerk can obtain, and assess the lodging tax due on the basis thereof, which said lodging tax shall be paid within five days of the receipt of written notice and demand for such payment. Any such return or assessment made by the City Clerk shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. (Ord. 1117.05, passed 12-12-05)

§ 118.09 INTEREST.

The amount of lodging tax not timely paid, together with any penalty, shall bear interest at the rate of 8% per annum from the time such lodging tax should have been paid until paid. Any interest and penalty shall be added to the lodging tax and be collected as part thereof. (Ord. 1117.05, passed 12-12-05)

§ 118.10 APPLICATION OF PAYMENTS.

All payments shall be credited first to penalties, next to interest and then to the lodging tax due. (Ord. 1117.05, passed 12-12-05)

§ 118.11 ENFORCEMENT.

If any portion of the lodging tax imposed by the city, including penalties thereon, is not paid within 30 days after it is required to be paid, the city attorney may institute legal action as may be necessary to recover the amount due plus interest penalties, the costs and disbursement of any action. (Ord. 1117.05, passed 12-12-05)

§ 118.12 ADMINISTRATION OF LODGING TAX.

The City Clerk shall administer and enforce the assessment and collection of the lodging taxes imposed by the city. The City Clerk shall prepare blank forms for the returns and other documents required by this section and shall make them available to members of the public. (Ord. 1117.05, passed 12-12-05)

§ 118.13 EXAMINATION OF RECORDS.

The City Clerk may examine the books, papers, and records of any operator of a facility subject to the lodging tax imposed by the city in order to verify the accuracy of any return made, or if no return was made, to ascertain the lodging tax imposed by the city through this chapter. Every such operator is directed and required to give the City Clerk the means, facilities and opportunity for such examination and investigations as are hereby authorized. (Ord. 1117.05, passed 12-12-05)

§ 118.14 APPEALS.

Any operator aggrieved by any notice, order or determination made by the City Clerk under this section may file with the City Clerk a petition for review of such notice, order or determination by the City Council. The petition shall contain the name of the petitioner, the petitioner's address, the location of the lodging facility, the order, notice or determination subject to the review and the basis for the request for review. Upon receipt of the petition, the City Clerk will place the matter on the City Council agenda for a hearing as soon as practical. The City Clerk shall give the petitioner at least five days prior written notice of the date, time and place of such hearing. At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The City Council shall make written findings of fact and conclusions based upon this chapter and the evidence presented. The City Council may modify, reverse or affirm the notice, or order or determination that is subject to the review. All requests for review must be made within one year of the date of notice, order or determination. (Ord. 1117.05, passed 12-12-05)

§ 118.15 USE OF PROCEEDS.

Ninety-five percent of the gross proceeds obtained from the collection of lodging taxes shall be used by the city to fund a local convention or tourism bureau for the purpose of marketing and promotion the city as a tourist or convention center. (Ord. 1117.05, passed 12-12-05)

§ 118.16 BENSON AREA TOURISM BOARD.

(A) *Appointment of members.* The Benson Area Tourism Board is hereby established for the purpose of advising and assisting the City Council on the promotion of the Benson area as a

tourist destination and/or convention site and in the allocation and utilization of the lodging tax proceeds collected within the city to further that purpose. The first board shall consist of seven persons; the Chamber of Commerce Manager, two persons appointed for a term of one year, two persons appointed for a term of two years, and two persons appointed for a term of three years. Thereafter each appointment or reappointment shall be for three years. No person may serve longer than two consecutive terms other than the Chamber of Commerce Manager. When making the appointments, priority shall be given to recommendations of the Chamber of Commerce. The Council may, at their discretion, ensure that there is representation on the board of a person or persons engaged in the business of providing lodging in the Benson area.

(B) *Meetings, administrative rules and matters.* The Benson Area Tourism Board shall meet a minimum of once of every four months, and the members shall determine the place of the meetings and shall adopt its own rules and regulations governing such meetings, subject to the provisions of this chapter.

(C) *Recommendations to Council.* The Benson Area Tourism Board shall make recommendations to the Council on the promotion of the Benson area as a tourist destination and/or convention site and for the allocation and utilization of the lodging tax proceeds.
(Ord. 1117.05, passed 12-12-05)

§ 118.99 PENALTY.

(A) The following penalties shall apply in the given situations:

(1) Failure to file a return or pay lodging tax to the city within 30 days of the due date: a penalty of 10% of the unpaid lodging tax.

(2) Failure to file a return or pay lodging tax imposed by the city by more than 30 days but less than 60 days of the due date: a penalty of 15% of the unpaid lodging tax.

(3) Failure to file a return or pay lodging tax imposed by the city by more than 60 days but less than 90 days of the due date: a penalty of 20% of the unpaid lodging tax.

(4) Failure to file a return or pay lodging tax imposed by the city by more than 90 days of the due date: a penalty of 25% of the unpaid lodging tax.

(B) If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The penalty shall be collected in the same manner as the lodging tax.
(Ord. 1117.05, passed 12-12-05)