

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BROOKHAVEN, GEORGIA, AMENDING THE CODE OF BROOKHAVEN, GEORGIA, AT CHAPTER 24, TAXATION, ARTICLE VI, EXCISE TAX ON HOTELS, SECTIONS 82-61 THROUGH 82-71 PERTAINING TO THE LEVY AND IMPOSITION OF AN EXCISE TAX ON SHORT-TERM LODGINGS, PURSUANT TO O.C.G.A. § 48-13-51, BY REPEALING THE PRESENT ARTICLE IN ITS ENTIRETY AND ENACTING A NEW ARTICLE III, EXCISE TAX ON SHORT-TERM RENTALS OF ROOMS, LODGINGS, AND ACCOMODATIONS, PURSUANT TO ACT 213 (HB 575), 2017 REGULAR SESSION OF THE GENERAL ASSEMBLY OF GEORGIA, LEVYING AND IMPOSING A TAX AT THE RATE OF EIGHT (8.0%), AND REGULATIONS PERTAINING THERETO; TO PROVIDE AN EFFECTIVE DATE; TO PROVIDE FOR SEVERABILITY; TO RESTATE AND REAFFIRM THE CODE OF BROOKHAVEN, GEORGIA, AS MODIFIED HEREBY; TO REPEAL ALL CODE PROVISIONS, ORDINANCES, OR PARTS THEREOF, IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BROOKHAVEN, GEORGIA, AND IT IS ESTABLISHED AS FOLLOWS:

Section 1. The Code of Brookhaven, Georgia, is hereby amended at Chapter 24, TAXATION, Article VI, EXCISE TAX ON HOTELS, Secs. 24-14- to 24-154, by repealing the present article in its entirety, and enacting a new Article III, EXCISE TAX ON SHORT-TERM RENTALS OF ROOMS, LODGINGS, AND ACCOMODATIONS, pursuant to Act 213 (HB 575) of the 2017 Regular Session of the Georgia General Assembly, as follows:

Article VI.

**EXCISE TAX ON SHORT-TERM RENTALS OF ROOMS, LODGINGS,
AND ACCOMODATIONS**

Sec. 24-140. DEFINITIONS.

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

City. The City of Brookhaven, Georgia, wherein the city government is empowered to impose this tax by O.C.G.A. § 48-13-50 *et seq.* and Act 213 of the 2017 Regular Session of the General Assembly of Georgia.

City Manager. The duly appointed city manager, or his designee.

Destination marketing organization. A private sector nonprofit organization or other private entity which is exempt from federal income tax under § 501(c)(6) or 501(c)(3) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed.

Due date. The 20th day after the close of the monthly period for which the tax is to be computed.

Estimated tax liability. The innkeeper's prospective tax liability based upon the average monthly tax remittance in the prior fiscal year, as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.

Facility. For purposes of this article, any facility or any portion of a facility, including any hotel, studio hotel, motel, motor hotel, auto or trailer court, truck stop, tourist cabin, campground, lodge, inn, bed and breakfast, time-share or other condominium, apartment community, public club, or private club, containing guest accommodations and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any student dormitory, hospital, asylum, sanitarium, orphanage, jail, prison, or other facility in which human beings are housed and detained under legal restraint.

Folio. Primary documentation produced by an innkeeper that demonstrates interaction between the innkeeper and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax, and the method(s) of payment.

Guest room. Accommodations occupied, or intended, arranged, or designed for transient or short-term occupancy, not exceeding thirty (30) consecutive days, by one or more occupants for the purpose of living quarters or residential use.

Innkeeper. Any person operating a facility in the city including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, lender in possession, licensee or any other person operating such facility; and who is subject to the taxation imposed for furnishing for value to the public any rooms, lodgings, or accommodations.

Monthly period. The calendar month of any year.

Occupancy. The use or possession, or the right to the use or possession of any guest room in a facility or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the guest room.

Occupant. Any person who, for a consideration, uses, possesses, or has the right to use or possess any guest room in a facility under any lease, concession, permit, right of access, license to use, or otherwise.

Person. Any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, 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, the State of Georgia and any instrumentality of either thereof upon which the city is without power to impose the tax.

Promoting tourism, conventions, and trade shows. As used in this article, such phrase means planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows.

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 lodging provider to the occupant, without any deduction therefrom whatsoever.

Tax. The excise tax on occupants imposed by this article, as provided for by O.C.G.A. § 48-13-50, *et seq.*

Tourism product development. The expenditure of funds for the creation and expansion of physical attractions which are available and open to the public and which improve destination appeal to visitors, support visitors' experience, and are used by visitors. Such expenditures may include capital costs and operating expenses. For examples, see O.C.G.A. §48-13-50.2.

Sec. 24-141. INTENT AND AUTHORITY TO LEVY THE TAX.

(a) It is the intent of this article to levy and impose an excise tax, at the rate of eight (8.0%) percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the City of Brookhaven for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly or periodically furnished for value. Such lodgings shall include "bed and breakfast" houses and other short-term rentals of single-family homes, apartments, and condominiums when the intended occupancy shall be for thirty (30) days or less.

(b) The authority to levy an excise tax at the rate of eight (8.0%) is granted in Act 13 (HB 575) of the 2017 Regular Session of the General Assembly of Georgia, enacted in accordance with the procedure set forth in O.C.G.A. §48-13-51(b).

(c) In each fiscal year in which the tax is collected at the rate of eight (8.0%) percent, the city shall expend an amount equal to not less than fifty (50%) percent of the total amount of taxes collected that exceeds the amount of taxes that would be collected at the rate of five (5.0%) percent for “promoting tourism, conventions, and trade shows”, as defined in O.C.G.A. §48-13-50.2 (4) by a “destination marketing organization”, as defined in O.C.G.A. §48-13-50.2 (1), designated by the city; and, the remaining amount of taxes collected at the rate of eight (8.0%) percent that exceed the amount of taxes that would be collected at a rate of five (5.0%) percent, which are not otherwise expended above, shall be expended for “tourism product development”, as defined in O.C.G.A. §48-13-50.2 (6), and more specifically shall be allocated for property acquisition, design, development, and construction of the Peachtree Creek Greenway, as provided in the Act.

(d) The City Council hereby designates the DeKalb Convention and Visitors Bureau, Inc., a Georgia non-profit corporation, as its destination marketing organization for purposes of carrying out this article. For each fiscal year in which the tax is levied and collected at the rate of eight (8.0%) percent, the city shall adopt a budget plan specifying how the proceeds of the tax are to be expended. Prior to adopting the budget, the city shall contract with the destination marketing organization to meet the budget expenditure requirements of this section. Following the end of each fiscal year, the destination marketing organization shall provide the city with audit verification that the funds were expended in accordance with the requirements of this section.

Sec. 24-142. IMPOSITION AND LEVY; TAX RATE.

There is hereby levied and imposed, effective October 1, 2017, a tax at the rate of eight (8.0%) for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the City of Brookhaven for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other facility in which rooms, lodgings, or accommodations are regularly or periodically furnished for value. Such lodgings shall include “bed and breakfast” houses and other short-term rentals of single-family homes, apartments, or condominiums when the intended occupancy shall be for thirty (30) days or less.

**Sec. 24-143. COLLECTION BY INNKEEPER; RECEIPT TO OCCUPANT;
REPORTING AND REMITTANCE OF TAXES COLLECTED.**

Every innkeeper in the city shall collect a tax of eight (8.0%) percent on the amount of rent from the occupant unless an exemption is provided under § 24-142. The innkeeper shall provide a receipt to each occupant, which receipt shall reflect both the amount of rent and the amounts of this and other taxes applicable. This tax shall be due from the occupant, and shall be collected by the innkeeper at the same time that the rent is collected. The innkeeper shall be liable to the city for the full amount received or collected as tax, whether collected appropriately or inappropriately; and for any amount of tax that should have been collected, but was not.

(a) *Liability of Innkeeper.* Any person who receives or collects the tax or any consideration represented to be the tax from another person holds the amount so collected in trust for the benefit of the city and is liable to the city for the full amount collected, plus penalty and interest. An individual who controls or supervises the collection of the tax from another person, or an individual who controls the accounting for or remittance of the tax, and who willfully fails to remit or cause to be remitted the tax is liable as a responsible individual for an amount equal to the tax not remitted or caused to be remitted, plus penalty and interest. The dissolution of a corporation, partnership or other business or fraternal association does not affect a responsible individual's liability under this subsection. Furthermore, the liability imposed by this subsection shall be in addition to any other penalty provided by law.

(b) *Return; remittance; time of filing; innkeeper required to file; contents.* On or before the 20th day of the month succeeding each monthly period, a return for the preceding monthly period together with appropriate remittance shall be filed with the city finance department. The return shall report the gross rent, taxable rent, exempt rent, amount of tax collected or otherwise due for the period, and such other information as may be required by the tax and license clerk. However, if the estimated tax liability for any monthly period shall exceed \$2,500.00 for an innkeeper who, in the prior fiscal year remitted tax greater than \$2,500.00 in any three consecutive months, such lodging provider shall file an estimated return and remit not less than 50 percent of the estimated tax liability for the monthly period by the 20th day of that same monthly period. The amount of tax so remitted shall be credited against the amount to be due with the regular return for the monthly period to be filed on the 20th day of the succeeding month.

(c) *Extension of time of filing; authority; requirements; remittance; penalty and interest.* The City Manager may, for good cause, extend the time for making returns for not longer than 30 days. No extension shall be granted more than once in any calendar quarter. An innkeeper granted an extension shall remit a tax equaling not less than 100 percent of the tax paid for the corresponding period of the prior fiscal year; such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty or interest shall be charged during the first ten days of the extension period. Thereafter, interest shall be collected on the unpaid balance at the rate of one percent per month.

(d) *Collection fee allowed innkeepers.* Innkeepers 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 the amount is not delinquent at the time of payment. The rate of the deduction shall be three percent of the amount due, but only if the amount due was not delinquent at the time of payment.

Sec. 24-144. Exemptions.

No tax shall be collected from an occupant who has occupied any guest room for more than 30 continuous days; or from an occupant who certifies in writing that he is staying in such accommodations as a result of his residence having been destroyed by fire or other casualty; or from the United States, the State of Georgia, or any instrumentality of either thereof; or from any official or employee of the state, its units of local government or any other instrumentality of the state, when traveling on official business and presenting written substantiation thereof or paying by state or local government credit or debit card; or from a foreign sovereign enjoying exemption by treaty or consular convention, when presenting substantiation issued by the United States Department of State. Occupancy provided without charge is not subject to this tax.

Sec. 24-145. – Due date of taxes; payments; civil penalties and interest.

(a) *Due date of taxes.* All amounts of such tax shall be due and payable to the city tax and license clerk monthly on or before the 20th day of the month next succeeding the respective monthly period. The tax shall become delinquent for any monthly period after the 20th day of each succeeding month during which it remains unpaid.

(b) *Civil penalty and interest for failure to pay tax by due date.* An innkeeper who fails to make any return or to pay the amount of tax as prescribed, shall be assessed a specific civil penalty to be added to the tax in the amount of five percent of the amount due or \$5.00, whichever is greater, if the failure is for one month or less; and an additional five percent or \$5.00, whichever is greater, for each additional month or fraction thereof in which such failure shall continue; provided, however, that the aggregate penalty for any single violation shall not exceed 25 percent or \$25.00, whichever is greater. Delinquent amounts shall bear interest at the rate of one percent per month, or fraction thereof, until paid.

(c) *Acceptance of delinquent return and remittance without imposing penalty and interest; authority; requirements.* If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the city by affidavit attached to the return, and remittance is made within ten days of the due date, such return may be accepted exclusive of penalty and interest.

(d) *Waiving of penalty and interest; authority.* O.C.G.A. § 48-2-41, relating to the authority to waive interest, and § 48-2-43, relating to the authority to waive penalty, shall apply; provided, however, that the governing authority shall stand in lieu of the Georgia Commissioner of Revenue, and the city shall stand in lieu of the state.

(e) *Penalty for fraud.* In the case of a false or fraudulent return, or of failure to file a return where willful intent exists to defraud the city of any tax due, a civil penalty of 50 percent shall be assessed.

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Sec. 24-146. - Deficiency determinations.

(a) *Recomputation of tax; authority to make; basis of recomputation.* If the City Manager is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by any innkeeper, 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 deficiency determinations may be made of the amount due for one or more monthly periods.

(b) *Penalty and interest for failure to pay tax.* Penalty and interest shall be assessed upon the amount of any determination, as provided by § 24-145.

(c) *Notice of determination; service of.* The city manager shall give to the innkeeper written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the innkeeper at his address as it appears in the occupation tax records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee, or when made by statutory overnight delivery.

(d) *Time within which notice of deficiency determination to be mailed.* Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within three years after the twentieth (20th) day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period should last expire.

(e) *Appeal or protest of deficiency determination.* The procedure for contesting a deficiency determination shall be as provided by O.C.G.A. § 48-5-380.

Sec. 24-147. - Determination if no return made.

(a) *Estimate of gross receipts.* If any innkeeper fails to make a return, the city manager shall make an estimate of the amount of the gross receipts of the innkeeper, or as the case may be, of the amount of total rentals in the city which are subject to the tax. The estimate shall be made for the period or periods in respect to which the lodging provider failed to make the return and shall be based upon any information which is or may come into the possession of the city manager. Written notice shall be given in the manner prescribed in subsection 24-146(c).

(b) *Penalty and interest for failure to pay tax.* Penalty and interest shall be assessed upon the amount of any determination, as provided by § 24-145.

Sec. 24-148. Registration of lodging provider; form and contents; execution; certificate of authority.

Every person engaging or about to engage in business as an innkeeper in the city shall immediately register with the city tax and license clerk on a form provided by said official. Persons engaged in such business must so register not later than 30 days after the date that this article becomes effective [October 1, 2017]. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place(s) of business and such other information which would facilitate the administration of the tax as prescribed by this article. 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 case of ownership by a corporation, by an officer. The city tax and license clerk shall, after such registration, issue without charge a certificate of authority to each innkeeper to collect the tax from the occupant. A separate registration shall be required for each separate place of business of an innkeeper within the city. Each certificate shall state the name and location of the business to which it is applicable.

Sec. 24-149. - Collection of tax by city.

(a) *Action for delinquent tax; time for.* At any time within three years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the city manager may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with penalty, interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(b) *Innkeeper selling or quitting business.* If any innkeeper liable for any amount under this article sells out his business or quits his business, he shall make a final return and remittance within 15 days after the date of selling or quitting the business.

(c) *Duty of successors or assignees of lodging provider to withhold tax from purchase money.* If any innkeeper liable for any amount of tax, interest or penalty under this article sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the city manager either a receipt reflecting full payment or a certificate stating that no amount is due.

(d) *Liability for failure to withhold.* If the purchaser of a business fails to withhold from the purchase price as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.

(e) *Credit for tax, 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 city, it may be

refunded by the governing authority. If the innkeeper or person determines that he has overpaid or paid more than once, which fact has not been determined by the city manager, such person shall have three years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claimant may request a hearing before the board of commissioners at which the claim and any other information available will be considered. The board of commissioners shall approve or disapprove the claim, and notify the claimant of its action.

Sec. 24-150. Administration of ordinance; record keeping.

(a) *Authority of City Manager.* The City Manager shall administer and enforce the provisions of this article for the collection of the tax. The City Manager may delegate such duties, in writing, to the Finance Department.

(b) *Records required from lodging providers, etc.* Every innkeeper renting guest rooms in the city shall preserve, for a minimum of three years, all folios, receipts, certificates of exemption and such other documents as the city manager may prescribe, and in such form as he may require. Said records shall at all times be available for examination within the city.

(c) *Examination of records; audits.* The city manager or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any innkeeper renting guest rooms and any person liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the innkeeper, to ascertain and determine the amount required to be paid. Such examination shall be conducted at the place of lodging provision, unless the city manager shall stipulate another place within the city.

(d) *Authority to require reports; contents.* In administration of the provisions of this article, the city manager may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax. The reports shall be filed with the city manager when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exemption, or such other information as the city manager may prescribe.

Sec. 24-151. Criminal penalties.

(a) It shall be unlawful for any innkeeper to willfully fail to make a return and pay the taxes due under this article by the due date provided. If the tax liability is \$10,000.00 or less, any person who violates this section shall be guilty of a misdemeanor. If the tax liability is more than \$10,000.00, any person who violates this section shall be guilty of a felony. (O.C.G.A. § 48-13-58.1).

(b) Any innkeeper who fails, neglects, or refuses to collect the tax as provided this article shall be deemed guilty of a misdemeanor and, in addition to being liable for payment of the tax, upon conviction thereof, shall be punished by a fine of not more than \$100.00, or confinement in the county jail for a term not to exceed three months, or both. (O.C.G.A. § 48-13-59).

(c) Any innkeeper who fails or refuses to make any return as provided by this article, to keep adequate records, or to open them for inspection by the city, or to furnish other data reasonably requested by the city manager shall be deemed guilty of a misdemeanor. (O.C.G.A. § 48-13-61; § 48-13-62).

(d) Any innkeeper who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00, nor more than \$300.00, or confinement for a term not less than thirty (30) days nor more than three months in the county jail, or both. (O.C.G.A. § 48-13-60).

(e) It shall be unlawful for any innkeeper to violate any other provision of this article for which punishment is not otherwise provided in this section. Each and every day during any portion of which any such violation under this article is committed, continued or permitted, shall constitute a separate offense. A person violating this subsection shall be guilty of a misdemeanor. (O.C.G.A. § 48-13-63).

Section 2. All ordinances and Code sections, or parts thereof, in conflict with the foregoing are expressly repealed as of the effective date of this Ordinance, as set by Section 5 of this Ordinance. Until such time, all existing ordinances shall remain in effect and authority.

Section 3. Should any provision of this ordinance be rendered invalid by any court of law, the remaining provisions shall continue in force and effect until amended or repealed by action of the municipal governing authority.

Section 4. Except as modified herein, The Code of Brookhaven, Georgia, is hereby reaffirmed and restated. The codifier is hereby granted editorial license to include this amendment in future supplements of said Code by appropriate section, division, article or chapter.

Section 5. If approved by a majority of the City Council and signed by the Mayor, this ordinance shall become effective on October 1, 2017.

**STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF BROOKHAVEN**

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SO ORDAINED, this ____ day of June, 2017.

John Arthur Ernst, Jr.
Mayor

Attest:

Approved as to form:

Susan Hiott
City Clerk

Christopher D. Balch
City Attorney