

## ORDINANCE NO. 12-1-2014

### **AN ORDINANCE AMENDING THE TRANSIENT ROOM TAX IN THE TOWN OF VIENNA**

The Board of Supervisors of the Town of Vienna, Dane County, Wisconsin, do hereby ordain as follows:

SECTION A. Ordinance No. 12-2002 of the Town of Vienna, Dane County, Wisconsin, is hereby repealed and replaced as follows:

#### **Transient Room Tax**

- 1 Definitions
- 2 Room Tax Established
- 3 Imposition of Room Tax
- 4 Permit Required
- 5 Liability for Tax
- 6 Audit
- 7 Failure to File Return; Estimated Tax
- 8 Unpaid Taxes: Interest
- 9 Records
- 10 Confidentiality
- 11 Violations; Penalties

#### **1) DEFINITIONS**

In this Chapter, the following definitions shall be applicable:

- (a) **Hotel or Motel** means a building or group of buildings in which the public may obtain accommodations for a consideration including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, tourist rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanitariums or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual, and excepting mobile home parks.

- (b) **Gross Receipts** has the meaning as defined in Wis. Stats. § 77.51(4) insofar as applicable.
- (c) **Transient** means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public.
- (d) **Bed and Breakfast Establishment** means any place of temporary lodging that provides four or fewer rooms for rent, which is open for rental more than ten nights in a twelve month period, is the owner's personal residence and is occupied by the owner at the time of rental, and in which the only meal served is breakfast.

## 2) ROOM TAX ESTABLISHED

Pursuant to Wis. Stats. § 66.0615, a tax is hereby imposed on the privilege and service of furnishing, at retail, of rooms or lodging to transients by hotel keepers, motel operators, operators of bed and breakfast establishments, and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the rate of five percent (5%) of the gross receipts from such retail furnishing of rooms or lodging. Such tax shall not be subject to the selective sales tax imposed by Wis. Stats. § 77.52(2), and may not be imposed on sales to the federal government and persons listed in Wis. Stats. § 77.54(9a).

## 3) COLLECTION OF ROOM TAX

This tax imposed under this Chapter shall be administered by the Town Clerk. No tax shall be imposed under this Chapter until January 1, 2015; the taxes shall be due and payable to the Town of Vienna quarterly, with the first payment of taxes due on April 30, 2015, and with subsequent payments to be made on or before the last day of the month next succeeding the calendar quarter for which the tax is imposed. A return shall be filed with the Town Clerk, by those furnishing at retail such rooms, lodging or accommodations on or before the same date on which such tax is due and payable. Such return shall show the gross receipts of the preceding calendar quarter from such retail furnishing of rooms, lodging, or accommodations, the amount of taxes imposed for such period and such other information as the Town Clerk deems necessary. Every person required to file such quarterly return shall also file an annual return within thirty days of the close of each calendar year. The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns and shall contain certain such additional information as the Town Clerk may reasonably require. Such annual returns shall be made on forms as prescribed by the Town Clerk from time to time. All such returns shall be signed by the person required to file a return or duly authorized agent but need not be verified by oath. The Town Clerk may, for good cause, extend the time for filing any return, but in no event longer than one month from the filing due date.



4) PERMIT REQUIRED

- (a) Every person furnishing rooms or lodging under Section 2-7-2 shall annually file with the Town Clerk an application for a permit for each place of business within the Town. Every application for a permit shall be made upon a form prescribed by the Town Clerk and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place of business, and such other information as the Clerk reasonably requires. The application shall be signed by the owner, if a sole proprietor, and if not a sole proprietor, by the person authorized to act on behalf of such owner(s).
- (b) After compliance with Subsection (a) above and Section 2-7-9(a) by the applicant, the Town Clerk shall grant and issue to each applicant a separate permit for each place of business within the Town. Such permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.
- (c) At the time of filing of the application for a permit under this section, the applicant shall pay an application fee of \$75.00 therewith, which fee is non-refundable. Such fee may be changed from year to year by resolution duly adopted by the Town Board.
- (d) Whenever any person fails to comply with this Chapter, the Town Clerk may upon ten days notification and after affording such person the opportunity to show cause why his/her permit should not be revoked, suspend any and all of the permits held by such person. The Town Clerk shall give to such person written notice of the suspension or revocation of any of his/her permits. The Town Clerk shall not issue a new permit after the revocation of a permit unless he/she is satisfied that the former holder of the permit will comply with the provisions of this Chapter. A fee of \$50.00 shall be imposed for the renewal of issuance of a permit that has been previously suspended or revoked.

5) LIABILITY FOR TAX

If any person liable for any amount of tax under this Chapter sells out his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient amounts of the purchase price to cover such amount until the former owner produces a receipt from the Town Clerk that it has been paid or a certificate stating that no amount is due. If a person subject to the tax imposed by this Chapter fails to withhold such amount of tax from the purchase price as required, he or she shall become personally liable for payment of the amount required to be withheld by him to the extent of the price of the accommodations valued in money.

6) AUDIT

- (a) The Town Clerk may, by office audit, determine the tax required to be paid to the Town or the refund due to any person under this Chapter. This determination may be made upon the basis of facts contained in the return being audited or on the basis of any other information within the Clerk's possession or obtained pursuant to Wis. Stats. § 66.0615(2). One or more such office audit determinations may be made of the amount due for anyone or for more than one period.
- (b) The Town Clerk may, by field audit, determine the tax required to be paid to the Town, or the refund due to any person under this Section. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information within the Clerk's possession or obtained pursuant to Wis. Stats. § 66.0615(2). The Clerk is authorized to examine and inspect the State sales tax records, and memoranda, of any person in order to verify the tax liability of that person or of another person. Nothing herein shall prevent the Town Clerk from making a determination of tax at any time.
- (c) Any person subject to Sec. 2-7-3 who fails to comply with a request to inspect and audit the person's financial records under paragraph (a.) or (b.) shall be subject to a forfeiture, not to exceed 5% (five percent) of the tax due under this ordinance.

#### 7) FAILURE TO FILE RETURN; ESTIMATED TAX

If any person fails to file a return as required by this Chapter the Clerk shall make an estimate of the amount of the gross receipts under Section 2-7-2. Such estimate shall be made for the period for which such person failed to make a return and shall be based upon any information, which is in the Town Clerk's possession or may come into the Clerk's possession. On the basis of this estimate, the Clerk shall compute and determine the amount required to be paid to the town, adding to the sum thus computed a penalty equal to ten percent (10%) thereof. The tax determined pursuant to this paragraph shall be deemed to have been due on the date the return and tax were to have been filed with the town.



8) UNPAID TAXES; INTEREST; FORFEITURES

- (a) All unpaid taxes under this Chapter shall bear interest at the rate of one percent (1.0%) per month on the unpaid balance from the date due of the return until the first day of the month following the month in which the tax is paid to the Town Clerk. All refunded taxes shall bear interest at twelve percent (12%) per annum from the due date of the return until the first day of the month following the month in which said taxes are refunded. An extension of time within which to file a return shall not operate to extend the due date of the return for purposes of interest computation. If the Town Clerk determines that any overpayment of tax has been made intentionally or because of carelessness or neglect, or if the tax that was overpaid was not accompanied by a complete return, the Town Clerk shall not allow any interest thereon.
- (b) Delinquent tax returns shall be subject to a late filing fee of \$75.00, which fee may be changed from year to year by resolution duly adopted by the Town Board.
- (c) The tax imposed by this Chapter shall be considered as delinquent if not paid:
  - (1) In the case of a timely filed return, within thirty (30) days after the due date of the return or within thirty (30) days after the expiration of an extension period, if one has been granted; or,
  - (2) In the case of no return filed or a return filed late, by the due date of the return,
- (d) If any tax due hereunder, including taxes determined under Sec. 2-7-7, shall fail to be paid when due, then in such event, the person obligated to pay over the same shall pay a forfeiture in an amount not to exceed 25% (twenty-five percent) of the room tax due for the previous calendar year (or the current year if the Town Board is able to determine in its best judgment, the anticipated amount thereof, or \$5,000.00, whichever is less.
- (e) If a person fails to file a return when due, for any reason, or files a false or fraudulent return with intent in any case to defeat or evade the taxes imposed by this Chapter, the person shall pay a forfeiture of \$500.00 per day for each day said return is not so filed or remains on file containing the false or fraudulent information without a correction thereof.

9) RECORDS

- (a) Every person liable for the tax imposed by this Chapter shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form as the Town Clerk requires. Records shall be retained and available to the Town Clerk for a period of five years after date of filing of the annual return under Sec. 2-7-3 covering the records in question.

- (b) All tax returns, schedules, exhibits, writings or audit reports relating to such returns, on file with the Town Clerk are deemed to be confidential, except the Clerk may divulge their contents to the following, and no others:
  - (1) The person who filed the return;
  - (2) Officers, agents or employees of the Federal Internal Revenue Service or the State Department of Revenue;
  - (3) Officers or agents of the Town of Windsor as may be necessary to enforce collection.

#### 10) CONFIDENTIALITY

No person having any administrative duty under this Chapter shall make known in any manner the business affairs, operations or information obtained by an investigation of records of any person who is required to pay the tax as imposed by this Chapter, or the amount of source or income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person, except as provided in Section 2-7-9(b) and except as set forth in Wis. Stats. § 66.0615(3), Wis. Stats. Persons violating this section may be required to forfeit not less than \$100.00 or more than \$500.00.

#### 11) VIOLATIONS; PENALTIES

- (a) Any person who is subject to the tax imposed by this Chapter, who fails to obtain a permit as required by Section 2-7-4 or who violates any other provisions of this Chapter for which a specific penalty or forfeiture is not set forth above shall be subject to a forfeiture as prescribed in Section 1-1-6 of this Code. Each day, or portion thereof, that such violation continues is hereby deemed to constitute a separate offense.
- (b) Any delinquent amounts owed may be placed upon the tax rolls for collection. The Town may also sue to collect any amounts owing.

#### SECTION B SEPARABILITY AND CONFLICT

- (a) If any section, subsection, paragraph, subparagraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance
- (b) All ordinances or parts of ordinances which are inconsistent or contrary to this ordinance are repealed.

SECTION C EFFECTIVE DATE

This Ordinance shall become effective on January 1, 2015.

The above and foregoing Ordinance was duly adopted at a regular meeting of the Town Board of the Town of Vienna on the 4th day of December, 2017.

**TOWN OF VIENNA**

\_\_\_\_\_  
Lonnie Breggeman, Chairperson

\_\_\_\_\_  
Steve Ruegsegger, Supervisor

\_\_\_\_\_  
Karen Ingalls, Supervisor

\_\_\_\_\_  
Gary Endres, Supervisor

\_\_\_\_\_  
Ron Rupp, Supervisor

ATTEST:

\_\_\_\_\_  
Kathleen Clark, Town Clerk