



# City of Cleveland

## Clerk of Council

### ORDINANCE NO. 30-16

By Council Members Brancatelli and Kelley (by departmental request).

An emergency ordinance to supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Section 337.251 relating to limited lodging in residence districts; to amend various sections of Chapter 193; and to supplement the chapter by enacting new Section 193.121 relating to transient occupancy tax.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Section 337.251 to read as follows:

#### Section 337.251 Limited Lodging in Residence Districts

(a) Definitions. As used in this section:

- (1) "Accessory Use" shall have the same meaning as defined in Section 325.02.
- (2) "Booking Agent" means any person or entity that facilitates reservations or collects payment for limited lodging accommodations on behalf of or for an owner or primary resident. Merely publishing an advertisement for accommodation in a dwelling unit for limited lodging does not make the publisher a booking agent.
- (3) "Dwelling Unit" shall have the same meaning as defined in Section 325.20.
- (4) "Limited Lodging" means the accessory use of all or part of a dwelling unit by rental for temporary occupancy for dwelling, sleeping, or lodging. Limited lodging includes the arrangement of such rental by the owner through a booking agent.
- (5) "Lodgers" means a person who is a renter of all or part a dwelling unit and has mere use without actual or exclusive possession of the dwelling unit.
- (6) "Owner" means a titled-owner or a tenant/renter of a property who is in possession and control of the dwelling unit and who lives in the dwelling unit more than 51% of the calendar year. Any tenant or renter of the property must be authorized by the titled-owner of the property to provide limited lodging.
- (7) "Primary Residence" means the use of a dwelling unit for residential household living purposes of more than 51% of the calendar year by the owner, tenant/renter, or person in possession and control of the dwelling unit.
- (8) "Temporary Occupancy" means the accommodation of lodgers conducted in a dwelling unit, the primary use of which is for household living, and where the total accommodations of lodgers provided is for fewer than ninety-one (91) days per calendar year but where the provision of lodging to any particular lodger is for no more than thirty (30) consecutive days.

(b) General Provisions.

- (1) Limited lodging is permitted in a Residence District, provided that limited lodging in a particular dwelling unit may be provided for no more than ninety-one (91) days per calendar year.
- (2) Notwithstanding Chapter 365, limited lodging is not required to have a certificate of rental registration provided the dwelling unit remains owner-occupied as a Primary Residence.

(3) The standards set forth in division (c) of this section are intended to ensure that limited lodging will not be a detriment to the character and livability of the surrounding residential neighborhood.

(c) Standards. A dwelling unit may be used for limited lodging subject to compliance with all of the following minimum requirements:

(1) The dwelling unit shall remain as a household living unit with housekeeping facilities in common.

(2) Limited lodging must be accessory and incidental to the use of a dwelling unit for residential household living purposes as a Primary Residence.

(3) Smoke detectors shall be provided and maintained adjacent to each sleeping area in each dwelling unit as required in Chapter 392.

(4) One or more carbon monoxide detection devices shall be installed and maintained as close to the center of the dwelling unit and within close proximity to the living and sleeping areas of the dwelling unit.

(5) Lodgers shall be notified of the trash and recycle collection days for the property and any applicable rules and regulations pertaining to leaving or storing trash on the exterior of the property. The owner shall provide proper trash and recycling containers for the lodgers.

(6) The owner or primary resident offering the dwelling unit for limited lodging shall provide to any lodger the contact information, including a telephone phone number, of a person with responsibility to take action to resolve any complaints regarding the condition, operation or maintenance of the dwelling unit.

(7) Compliance with all other applicable provisions of the Cleveland Codified Ordinances related to residential dwelling units.

Section 2. That the following sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 193.02, as amended by Ordinance No. 597-13, passed May 20, 2013, Sections 193.04, 193.05, 193.06, 193.07, 193.08, 193.09, 193.11, 193.13, and 193.99 as enacted by Ordinance No. 252-A-83, passed June 16, 1983, are amended to read as follows:

#### Section 193.02 Definitions

As used in this chapter:

(a) "Administrator" means the Commissioner of Assessments and Licenses or his or her authorized representative.

(b) "Booking agent" means any person or entity that facilitates reservations or collects payment for hotel accommodations on behalf of or for a vendor. Merely publishing an advertisement for accommodations does not make the publisher a booking agent.

(c) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where lodging is offered to guests in one or more rooms, regardless of use of keyed entry, whether such rooms are in one (1) or several structures, and whether the rooms are located in different structures or on different parcels of land if the structures are not identified in advertisements of the accommodations as distinct establishments.

(d) "Transaction price" means the total amount of consideration, including money or any other value, paid, or to be paid, or given by, or on behalf of, a transient guest to a hotel or booking agent in



exchange for lodging. The transaction price is the amount advertised or published to the public inclusive of any fees built into the advertised or published price; however, service fees or booking fees, if separately stated, shall not be included in the transaction price.

(e) "Transient guest" or "Transient guests" means a person or persons occupying a room or rooms for lodging for less than thirty (30) consecutive days.

(f) "Vendor" means the person who is the owner or operator of the hotel and who furnishes the lodging.

#### Section 193.04 Transient Guest to Pay the Tax

(a) The transient occupancy tax shall be paid by the transient guest to the vendor unless division (b) of this section applies. Each vendor shall collect from the transient guest the full and exact amount of the tax payable on the taxable price for each taxable lodging. The tax required to be collected under this chapter shall be deemed to be held in trust by the vendor or the City until paid to the Administrator, as provided in Section 193.07 of this chapter. If for any reason the tax due is not paid to the vendor, the Administrator may require the transient guest to pay such tax directly to the Administrator.

(b) A booking agent collecting for a vendor may collect and remit the transient occupancy tax, and the vendor shall not be responsible for collecting the transient occupancy tax on any transaction for which the vendor has received confirmation that the booking agent has collected and remitted the tax.

(c) No exemption shall be granted except upon a claim therefor made at the time the lodging is furnished and, under penalty of perjury, upon a form and in the manner prescribed by the Administrator.

#### Section 193.05 Records Inspection and Preservation

Each vendor and booking agent shall maintain complete and accurate records of lodging furnished, together with a record of the tax collected thereon. Such records shall be open and accessible to the inspection of the Administrator within the City within fifteen (15) days upon notification in writing to the vendor or booking agent and shall be preserved for a period of three (3) years, unless the Administrator in writing consents to their destruction within that period, or by order requires that they be kept longer.

#### Section 193.06 Tax to be Separately Stated and Charged

(a) The vendor or booking agent collecting for a vendor shall state and charge the transient occupancy tax to the transient guest separately from the charge for the lodging and on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill or statement or charge made for occupancy issued or delivered by the vendor.

(b) No vendor or booking agent 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 vendor or booking agent, or that the tax will not be added to the amount charged for the lodging, or that, if added, any part will be refunded except in the manner provided in this chapter.

#### Section 193.07 Regulations for Filing Returns

(a) Each vendor or booking agent collecting for a vendor shall on or before the last day of the month make and file a return for the preceding month, on forms prescribed by the Administrator,

showing the receipts from furnishing lodging, the amount of tax due from the vendor or booking agent collecting for a vendor to the City for the period covered by the return, and such other information as the Administrator deems necessary for the proper administration of this chapter. All returns shall be signed by the vendor, its authorized agent, or booking agent collecting for a vendor. The Administrator may extend the time for making and filing returns. Returns shall be filed by delivering or mailing the same to the Administrator together with payment of the full amount of tax shown to be due thereon.

(b) The Administrator may authorize vendors or booking agents collecting for vendors whose tax liabilities are not such as to merit monthly returns, as determined by the Administrator upon the basis of administrative costs of the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

(c) Each vendor or booking agent collecting for a vendor shall file all claims for exemption from tax filed by the transient guests with the vendor during the reporting period with the return.

(d) The Administrator shall treat all returns and payments submitted by vendors and booking agents collecting for vendors as confidential and shall not release them except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State, the County, the City, for official use only, or except as required by law.

(e) The Administrator, if he or she deems it necessary in order to insure the payment of the tax imposed by this chapter, may require returns and payments to be made and filed for periods longer or shorter than a month.

#### Section 193.08 Refunds

The Administrator shall refund or grant credits to vendors or booking agents collecting for vendors for the amount of tax paid illegally or erroneously or paid on any illegal or erroneous assessment where the vendor or booking agent has not reimbursed itself from the transient guest. As between a vendor and a booking agent, the request for refund shall be made by the party that filed the return containing the illegal or erroneous assessment. A transient guest may obtain a refund or credit for the amount of taxes paid illegally or erroneously, but only when the tax was paid by the transient guest directly to the Administrator. No refund shall be paid unless the claimant establishes a right thereto by written records showing entitlement thereto and makes a claim filed within three (3) years of the date of payment in the manner and on forms prescribed and furnished by the Administrator, and stating under penalty of perjury, the specific grounds upon which the claim is founded.

#### Section 193.09 Failure to Collect and Report Tax; Determination by Administrator

(a) If any vendor fails or refuses to collect the transient occupancy tax or to file a return or remit the tax or any portion thereof, as required by this chapter, and the vendor has not received confirmation that a booking agent has collected and remitted the tax, the Administrator shall proceed in such manner as he or she may deem best to obtain information on which to base an assessment of the tax due. When the Administrator has obtained such information as he or she is able, he or she shall proceed to determine and assess against such vendor the tax and penalty provided for in this chapter.

(b) In case such determination is made, the Administrator shall serve notice upon the vendor of the amount so assessed, either by personal service or by registered or certified mail. Such vendor may, within ten (10) days after the serving or mailing of such notice, apply in writing to the Administrator for a hearing on the correctness of that amount assessed. If the vendor does not apply within the time prescribed, the tax and penalty determined by the Administrator shall become final and conclusive and immediately due and payable. If the vendor makes timely application, the Administrator shall give the vendor written notice not less than five (5) days in advance in the manner prescribed in this section, to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax and penalty. At any such hearing, the vendor may appear and offer evidence why such specified tax and penalty should not be so fixed.



(c) After such hearing, the Administrator shall determine the proper amount of tax due and shall thereafter give written notice to the vendor in the manner prescribed in this section, of such determination and the amount of such tax and penalty. The amount determined to be due shall be payable after fifteen (15) days.

#### Section 193.11 Actions to Collect

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 such tax collected by a vendor or a booking agent collecting for a vendor and not paid to the City shall be deemed a debt owed by the vendor or booking agent 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 an amount.

#### Section 193.13 Penalties on Unpaid Tax

In addition to interest as provided in Section 193.12 hereof, penalties based on the unpaid tax are hereby imposed as follows:

(a) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this chapter within thirty (30) days after the date required shall pay, in addition to the tax, a penalty equal to ten percent (10%) of the amount of the tax;

(b) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this chapter within sixty (60) days after the date required shall pay, in addition to the tax, a penalty equal to fifteen percent (15%) of the amount of the tax;

(c) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this chapter within ninety (90) days required or upon a second delinquency shall pay, in addition to the tax, a penalty equal to twenty percent (20%) of the amount of the tax;

(d) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this chapter within one hundred twenty (120) days or more or upon a third or later delinquency shall pay, in addition to the tax, a penalty equal to twenty-five percent (25%) of the amount of the tax.

#### Section 193.99 Penalty

(a) Any booking agent or vendor who fails to file any return or report required under this chapter shall be subject to a maximum fine of \$2,000 per occurrence. A separate offense shall be deemed to occur on the first day of each month the failure to file continues.

(b) Whoever violates any other provision of this chapter shall be fined not more than five hundred dollars (\$500.00).

Section 3. That the following existing sections of the Codified Ordinances of Cleveland, Ohio, 1976: Section 193.02, as amended by Ordinance No. 597-13, passed May 20, 2013, Sections 193.04, 193.05, 193.06, 193.07, 193.08, 193.09, 193.11, 193.13, and 193.99 as enacted by Ordinance No. 252-A-83, passed June 16, 1983, are repealed.

Section 4. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Section 193.121 to read as follows:

Section 193.121 Booking Agents

(a) Any booking agent, that facilitates transactions for one or more hotels in the City and that does not collect or remit the tax on behalf of all the vendors of such hotels, shall provide the City quarterly within thirty (30) days of the end of each calendar quarter a transaction report. The transaction report shall consist of all listings by the vendors during the preceding calendar quarter, including, but not limited to, the dates of occupancy for each lodging and the amount paid for each completed transaction, if any.

(b) Any booking agent that lists one or more hotels in the City shall:

(1) at the time any vendor first lists a hotel with it, notify the vendor of the vendor's tax and license obligations to the City; and

(2) annually provide all vendors of one or more hotels with a reminder of their tax and license obligations to the City.

In both cases, the booking agent shall use language provided or approved by the Administrator.

Section 5. That the Director of Finance is authorized to enter into one or more agreements with booking agents as defined in this ordinance to facilitate compliance with the purposes of this ordinance under such terms and conditions acceptable to the Director of Law.

Section 6. That, under this ordinance, the amendment of Sections 193.02, 193.04 to 193.09, 193.11, 193.13 and 193.99 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended and enacted by various ordinances, and the enactment of Sections 193.121 and 337.251, shall take effect and be in force on July 1, 2016.

Section 7. That Section 337.251 as enacted by this ordinance, shall be of no force and effect as of February 1, 2017.

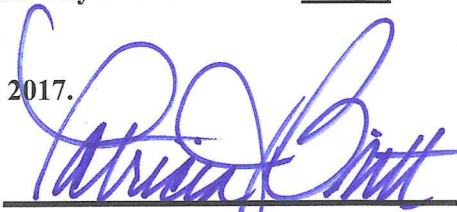
Section 8. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed June 6, 2016.  
Effective June 7, 2016.

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I, Patricia J. Britt, City Clerk, Clerk of Council, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 30-16, passed by the Council of the City of Cleveland on June 6, 2016.

WITNESS my hand at Cleveland, Ohio, this 28<sup>th</sup> day of March, 2017.

  
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Patricia J. Britt  
City Clerk, Clerk of Council