

ORDINANCE NO. 750-21

AN ORDINANCE AMENDING CHAPTER 3.08 OF THE EVANS MUNICIPAL CODE TO ADD REQUIREMENTS FOR OBTAINING AND MAINTAINING A PUBLIC ACCOMMODATIONS TAX LICENSE

WHEREAS, Chapter 3.04 of the Evans Municipal Code requires operators of lodging facilities to obtain a business license; and,

WHEREAS, Section 3.04.500.M of the Evans Municipal Code requires business licensees to avoid all forbidden, improper, or unnecessary practices or conditions which do, or may affect, the public health, morals, or welfare; and,

WHEREAS, Chapter 3.08 of the Evans Municipal Code requires operators of lodging facilities to obtain a license, subject to annual renewal, known as the public accommodations tax license; and,

WHEREAS, the Evans Police Department has observed and documented a substantial increase in criminal activity and calls for service in connection with lodging facilities. In a recent consecutive twelve (12) month period, eighteen percent (18%) of the total calls for service received by the Evans Police Department originated from one of Evans's lodging facilities; and,

WHEREAS, the high-level of criminal activity occurring at the City's lodging facilities consumes a disproportionate level of law enforcement resources, negatively affecting the health, safety, and welfare of the city as a whole; and,

WHEREAS, the City Council of the City of Evans desires to address the excessive calls for service and high incidents of crime occurring at the City's lodging facilities as well as any additional future lodging facilities; and,

WHEREAS, the City Council of the City of Evans has determined an accommodations licensing program as part of the existing public accommodations tax license requirement is the most effective method to reduce criminal activity and excessive calls for service at the City's lodging facilities.

WHEREAS, City Council intends that the requirements and obligations under this ordinance are separate and in addition to the requirements for general business licenses under Chapter 3.04. Thus, notwithstanding any provision of this ordinance, public accommodations licensees will remain subject to all obligations under Chapter 3.04 of the Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO:

Section 1. Chapter 3.08 of the Evans Municipal Code is hereby amended to read in full as follows:

3.08.010 Legislative intent.

The legislative intent of the City Council in enacting the ordinance codified in this Chapter is that every person who, for consideration, leases or rents any hotel room, motel room or other accommodation located in the City, shall pay, and every person who furnishes, for lease or rental any such accommodation shall collect the tax imposed by this Chapter.

3.08.020 Definitions.

~~As used in this Chapter:~~

~~*Person* means an individual, partnership, society, club, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any other group or combination of individuals acting as a unit, including the United States of America, the State of Colorado, and any political subdivision thereof; and the plural as well as the singular.~~

~~*Rental or leasing of hotel or motel rooms or other accommodations* means the transaction of furnishing rooms or accommodations by any person to any other person who, for a consideration, uses, possesses or has the right to use or possess any room or rooms in a hotel, motel, apartment hotel, lodging house, guesthouse, guest ranch, mobile home, auto camp, trailer court or other accommodation.~~

As used in this Chapter:

- A. “Application” means an application for a new or renewed license under this Chapter.
- B. “Applicant” means the person required to apply for a new or renewed license under this Chapter.
- C. “Calls for service” (CFS) means and includes, but is not limited to, all calls to law enforcement that result in a representative being dispatched or directed to the lodging facility and officer-initiated activity relating to any violation of City ordinance or State law.
 - 1. Calls for service includes:
 - a. A call to emergency services that results in a response by a law enforcement representative to the lodging facility.
 - b. Any police-initiated call for service to the lodging facility that results in a criminal report.
 - c. Any call to emergency services or police-initiated call for service within the lodging facility’s surrounding neighborhood regarding activity that results in a criminal report, when such activity is associated with lodging facility staff and/or lodging facility guests and/or visitors.
 - 2. Calls for service shall not include the following:
 - a. Traffic citations in which the lodging facility property address is used as the location of violation.

b. Calls or reports originating from licensees in furtherance of obligations under Section 3.08.070.F.

- D. “Calls for service ratio” means the number of calls for service divided by the number of rooms for rent at the lodging facility.
- E. “Police Chief” shall mean the chief of police of the Evans Police Department.
- F. “Finance Director” means the City Finance Director, the City Treasurer or his or her designee.
- G. “License” means the public accommodations tax license required pursuant to this Chapter.
- H. “Person” means an individual, partnership, society, club, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any other group or combination of individuals acting as a unit, including the United States of America, the State of Colorado, and any political subdivision thereof, and the plural as well as the singular.
- I. “Rental or leasing of hotel or motel rooms or other accommodations” means the transaction of furnishing rooms or accommodations by any person to any other person who, for a consideration, uses, possesses, or has the right to use or possess any room or rooms in a hotel, motel, apartment hotel, lodging house, guesthouse, guest ranch, mobile home, auto camp, trailer court or other accommodation.
- J. “Significant criminal act” means an act or acts that causes serious bodily injury or death to any person or any act of violence that requires a law enforcement response.

3.08.030 Imposition and rate of tax.

On and after January 1, 1983, there is levied and shall be paid and collected an excise tax of three percent (3%) on the price paid for the leasing or rental of any hotel room, motel room or other accommodation located in the City.

3.08.040 Exempt transactions.

The following entities and transactions are exempt from the duty to pay tax under this Chapter, but not the duty to collect and remit the tax levied hereby.

- A. The leasing or rental of hotel rooms, motel rooms, or other accommodations to any occupant who is a permanent resident or who has entered into an agreement for occupancy or a room or rooms or accommodations for a period of at least thirty (30) consecutive days; and
- B. The United States Government, the State, its departments and institutions, and the political subdivisions thereof, including the City, when acting in their governmental capacities and performing governmental functions and activities; and
- C. Religious, charitable, and quasi-governmental organizations, but only in the conduct of their regular religious, charitable and quasi-governmental capacities,

and only if such organizations are exempt under state law from the payment of real property taxes or state sales tax.

3.08.050 Liability for payment of tax.

- A. It is unlawful for any lessee or renter of a hotel room, motel room or other accommodation located in the city to fail to pay, or for any lessor or renter of such accommodation to fail to collect the tax levied by this Chapter.
- B. The burden of proving that any transaction is not subject to the tax imposed by this Chapter shall be upon the person upon whom the duty to collect the tax is imposed.

3.08.060 Collected moneys held in trust.

All sums of money paid by a person who leases or rents any hotel room, motel room or other accommodation, as the public accommodations tax imposed by this Chapter, are public moneys that are the property of the City. The person required to collect and remit the public accommodations tax shall hold such moneys in trust for the sole use and benefit of the City until paying them to the City. The accommodation tax must be shown in a separate liability account in the books and records of the lessor.

3.08.070 Licensing and reporting procedure.

- A. Effective January 1, 2022, Every every person with a duty to collect the tax imposed in this Chapter shall obtain a License to collect the tax, and shall report such taxes collected, on forms prescribed by the City Clerk Finance Director, and remit the taxes to the City on or before the twentieth day of the month for the preceding month.
- B. The City Clerk shall issue a public accommodations tax License to persons who pay five dollars and fifty cents (\$5.50) and complete an application therefor stating the name and address of the person and the business, and such other information as the City Clerk may require. The License shall be numbered, show the name, residence, place and character of the business of the Licensee, and be conspicuously posted in the place of business for which it is issued. No public accommodations tax License is transferable. The License shall be in force and effect until the thirty first day of December of the year of issued, unless sooner revoked. Licenses are subject to renewal under Section 3.08.150. The Finance Director shall accept no license application that is not complete in every detail. If any application is deposited with the Finance Director and found, upon examination, to contain any omission or error, it shall be returned to the applicant for completion and correction without further action by the Finance Director. All licenses granted shall be valid for the calendar year in which they are issued, expiring on December 31 of the year issued unless revoked or suspended for cause. No application shall be deemed complete unless accompanied by the following:
 - 1. If the applicant is:

- a. An individual, the individual shall state his or her legal name and any aliases.
 - b. A partnership, the partnership shall state its complete name and the names of all partners, whether the partnership is general or limited, and provide a copy of the partnership agreement, if any.
 - c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process.
 - d. A limited liability company, the company shall state its complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State of Colorado, or in the case of a foreign company, evidence that it is currently authorized to do business in the State of Colorado, the name of the manager, and the name of the registered agent and the address of the registered office for service of process.
2. One or more statements as to whether:
- a. The applicant or any other individual listed pursuant to subsection (B)(1) of this Section has:
 - i. Previously operated, is currently operating, or has been employed at a lodging facility.
 - ii. Had a previous lodging facility license under this Chapter, or other lodging facility license ordinances, resolutions or other regulations from another city or county, denied, suspended, or revoked, or declared a public nuisance, including the name and location of the business for which the license was denied, suspended, revoked, or declared a public nuisance, as well as the date of the denial, suspension, revocation, or declaration as a public nuisance.
 - b. The applicant or any other individuals listed pursuant to Subsection (B)(1) of this Section has been a partner in a partnership or an officer or director of a corporation or manager of a limited liability company of a business whose lodging facility license has previously been denied, suspended, revoked, or declared a public nuisance including the name and location of the business for which the license was denied, suspended, revoked, or declared a public nuisance as well as the date of the denial, suspension, revocation, or declaration as a public nuisance.
 - c. The applicant or any other individual listed pursuant to Subsection (B)(1) of this Section holds any other licenses under this Chapter or other similar lodging facility license ordinances from another city or county and, if so, the names and locations of such other licensed businesses.

3. The location of the proposed lodging facility, including a legal description of the property, street address and telephone number.
 4. Proof of the applicant's right to possession of the premises wherein the lodging facility will operate.
 5. The applicant's mailing address and residential address.
 6. The applicant's social security number and/or federally issued tax identification number.
 7. A floor plan of the lodging facility that specifies the number of rooms contained in the lodging facility. The floor plan need not be professionally prepared.
 8. Payment in full of City license and application fees.
 9. The Finance Director may not require an application for a renewed license to contain all information that a new license application must contain.
 10. The License required under this Chapter is in addition to the business license required under Chapter 3.04 of the Code.
 11. Licenses issued under this Chapter are not transferrable.
 12. The requirements and obligations for Licenses under this Chapter 3.08 are separate and in addition to the requirements for general business licenses under Chapter 3.04.
 13. Notwithstanding any provision of this Chapter, Licensees remain subject to obligations under Chapter 3.04.
 14. At the direction of the City Manager, the Finance Director and Police Chief shall issue rules and regulations to carry out the provisions of this Chapter.
 15. Exercising law enforcement discretion, the Police Chief shall compile and promulgate to licensees a list of persons to be known as the "Do Not Rent List." The "Do Not Rent List" shall be distributed to licensees and updated at the discretion of the Police Chief.
- C. It is the duty of each such licensee, on or before January 1st of each year during which the licensee remains in the business of providing public accommodations, to obtain a renewal of the licensee, after paying the license renewal fee. Such fee is established and may be amended from time to time by City Council resolution.
- D. Whenever a business entity that is required to be licensed under this Chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new public accommodations tax license within 30 days of the change of ownership.
- E. ~~The license required by this Chapter may be revoked by the City Clerk, with the approval of the City Manager, for failure to collect or pay over the tax, as required by this Chapter, or for any other violation of this Chapter.~~ by the City Manager or designated hearing officer pursuant to the process set forth in Subsection 3.04.500.O of the Code.
1. ~~No revocation shall be effective until thirty (30) days after the City Clerk has given notice of such revocation.~~
 2. ~~The licensee, within ten (10) days after receipt of such notice, may request in writing a hearing before the City Council, and the suspension shall not~~

~~be effective until the hearing is held, and the decision of the City Council made.~~

F. For facilities with ten (10) or more rooms available for rent, it is the duty of such licensee, during which time the licensee remains in the business of providing public accommodations to:

1. Obtain and copy photo identification from any person engaged in the rental or leasing of hotel or motel rooms or other accommodations or occupying a hotel or motel room.
2. Compile and maintain a list of all lodging facility customers and guests over eighteen (18) years of age with identification information sufficient to ascertain the person's identity, including full legal names, aliases, if any, dates of birth, drivers' license numbers or other identifying information ascertained from photo identification. Such customer and guest list information must be kept by the licensee for a period of not less than ninety (90) days from the date such customer or guest occupies or visits the lodging facility. The licensee must make available to the Police Chief or members of the police department the customer and guest list upon request. However, in the event the licensee or hotel operator objects to turning over such occupancy, guest list, or registry information the licensee or hotel owner shall be afforded an opportunity to have a neutral decisionmaker review an officer's demand to search the registry before he or she faces penalties for failing to comply. Hearing requests under this subsection must be made by the licensee within 7 days of the police department's request for occupancy, guest list or registry information. Upon receipt of the request for a hearing under this subsection, the City Manager shall designate a hearing officer and set the matter for a precompliance review hearing, which shall occur within 30 days of the objection and request for a hearing. Any final decision by the hearing officer shall be in writing and subject to appeal under C.R.C.P. 106.
3. Not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise or other disturbance or activity offensive to the senses of the average citizen or to the residents of the neighborhood in which the establishment is located.
4. Report immediately to the Police Department all violations of city, state, or federal laws or of any conditions of the licensee's license or the provisions of this Chapter.
5. Maintain a level of light within the licensed premises which would permit the checking of identification materials without resorting to other lighting.
6. Engage in no other business on the premises except the rental of rooms and food and service directly related to the rental of rooms to persons paying for room rental. The use of bathrooms, bathing, or other room facilities is limited to persons renting or visiting rooms.
7. Rent rooms for a minimum of 12 consecutive hours.
8. Retain a uniformed private security company licensed to do business within the City of Evans under terms approved by the Police Chief.

9. Install and maintain surveillance cameras in all public areas in fully operational order and that always operate and make footage immediately available to the Evans Police Department upon request. All recordings from surveillance cameras shall be kept for no fewer than 45 days and shall be made available immediately to the Evans Police Department upon request at any time without advance notice.
10. Licenses must not rent any room or allow any guest whose name or identity appears on the "Do Not Rent List" compiled under Section 3.04.070(b)(15).
11. For room rentals purchased with cash, licensees must require deposits of not less than seventy (\$70) dollars for stays of fewer than seven (7) days or nights and not less than two hundred and ten (\$210) dollars for any stay exceeding seven (7) days or nights.
12. Immediately evict any occupants for incidents that have been substantiated by hotel staff or Evans Police and involve illegal drugs, sex crimes, disturbances, or violence or a threat of violence.
13. In addition to the requirements set forth above, licensees must maintain a call for service (CFS) ratio at or below 2.25 (two-and-one-quarter) during any consecutive twelve (12) month period. If the CFS ratio is determined to exceed 2.25 during any consecutive twelve (12) month period, as determined by the Police Chief, the licensee, upon written request by the Police Chief to the Licensee, must provide a remedial plan to the Police Chief that is reasonably calculated to reduce the CFS ratio. The remedial plan must be submitted to the Police Chief within 30 days that notice of excessive CFS ratio is sent to the licensee by the city. The remedial plan must be accepted by the Police Chief and must be reasonably calculated to reduce the CFS ratio to at or below 2.25 within 180 days. If the remedial plan is not acceptable to the Police Chief or the licensee fails to implement the remedial plan within 10 days of approval of such plan, the License is subject to license suspension or revocation.

3.08.080 Returns, reports and records maintenance and preservation.

- A. The ~~City Clerk~~ Finance Director may require any person to make such return, render such statement, or keep and furnish such records as the ~~City Clerk~~ Finance Director may deem sufficient and reasonable, to demonstrate whether ~~or not~~ the person is liable under this Chapter for payment or collection of the tax imposed herein, and whether the person is in compliance with such payment obligation.
- B. Any person required to make a return or file a report under this Chapter shall preserve those reports for a period of not less than three (3) years.

3.08.090 Interest on unpaid taxes.

In addition to any other penalties imposed herein for violation of this Chapter, a person shall be liable in an amount equal to one percent (1%) per month for all moneys which should

have been paid to the City from the date the moneys should have been paid until paid, whether or not the sums were collected.

3.08.100 Refunds.

Overpayments and refunds shall include interest at one percent (1%) per month, from the date application for such overpayment or refund is received by the City.

~~3.08.110 Hearings and appeals.~~ [This section is intentionally omitted].

- ~~A. After receiving a notice of license suspension or notice of assessment and demand for payment, a taxpayer may request a hearing before the City Council.~~
- ~~B. Such request must be in writing and be received by the City within ten (10) days after the notice is mailed.~~
- ~~C. Upon receipt of a request for a hearing, the City Council shall set a hearing date and hold a hearing. The City Council may affirm, reject, or modify the City Clerk's determination.~~
- ~~D. An aggrieved taxpayer may appeal the City Council's determination to the District Court of Weld County pursuant to Rule 106, Colorado Rules of Civil Procedure.~~

3.08.120 Enforcement - collection by action at law when.

- A. The public accommodations tax imposed by this Chapter is a first and prior lien on tangible personal and real property in which the person responsible to collect and remit the tax has an ownership interest, subject only to other taxes that may have a prior lien right pursuant to state or federal law.
- B. The tax liability may be collected in an action at law.
- C. Failure to pay such tax within a period of thirty (30) days shall cause such tax to be certified by the City Clerk to the county City Treasurer, to be placed upon the tax list for the current year, to be collected in the same manner as other taxes are collected, with a ten-percent penalty to defray the cost of collection, as provided by the laws of the State.
- D. For any person engaged in the rental or leasing of hotel or motel rooms or other accommodations it shall be unlawful to operate without a License required by this Chapter.
- E. Every Licensee and person owning, leasing, or operating real property upon which a lodging facility is situated, shall keep and maintain such real property free of trash, debris, excessive vegetation, and other obstacles. Notwithstanding the status or validity of a License required under this chapter, the owner, lessee, and operator shall maintain existing privately owned structures and real property keeping the premises free of trespassers or other members of the public except for the purpose of operating a licensed lodging facility.
- F. If a person engages in the rental or leasing of hotel or motel rooms or other accommodations without a valid License required under this Chapter, the Evans Police Department in coordination with the Evans Fire District, is authorized to

abate any dangerous condition, restrict access of the premises to the public; and enter the property for any lawful purpose.

3.08.130 Violation - penalty.

Any person who violates any of the provisions of this Chapter, including any owner of real property upon which such violation occurs, is guilty of a violation of this Chapter and shall be punished as provided in is subject to punishment and/or liability under Section 1.16.010 Chapters 1.16 or 1.17 of this Code. All remedies for violations of this Chapter are cumulative and the city may exercise one or more remedies concurrently or consecutively.

3.08.140 Application Fee.

The City shall impose fees, adopted by City Council resolution, necessary to defray the costs of processing the documentation of the activities of lodging facilities as allowed by law including, but not limited to, fees for a new license and renewal of an existing licensee.

3.08.150 License Review Process.

- A. Expiration, renewal, and renewal fees. All Licenses issued shall be annual, commencing on January 1st and expiring on December 31st of each calendar year. On or before December 31st of the calendar year in which the license is expiring, the holder of a license may apply for renewal to the city for the next ensuing calendar year period. A license for a new business issued on or after November 15th of any calendar year shall be valid for the next complete calendar year subject to the renewal provisions of this Section and subject further to the licensee's compliance with this Chapter. All applications for renewal shall be made on forms prescribed by the City Manager in consultation with the City Finance Director. Failure to file a completed application for renewal by the December 31st expiration date shall result in payment of an increased renewal fee in accordance with a schedule as may be adopted by City Council by resolution.
- B. In coordination with the City's Finance Department, City Attorney's Office, Building Inspection Department, Police Department, and the Evans Fire Protection District, the Finance Director shall review applications to ensure that they are complete in every detail and will look for such things as appropriate fees, complete and signed application, possession of premises and applicable code compliance, CFS ratios, any significant criminal acts on the lodging premises within the 365-day period preceding the application, and any other grounds for concern.
- C. The Finance Director may cause to be conducted any other investigation deemed necessary by the Finance Director to determine the application's conformity to any requirement of the Code or other applicable laws.
- D. Any reports of the results of any investigation conducted by any City department shall be delivered by the respective departments or officials to the Finance Director.

- E. The Finance Director shall mail the report of findings based on the investigation to the applicant and, upon request, to other interested parties.
- F. An application with a completed investigation shall be administratively approved, conditioned, or denied by the Finance Director within thirty (30) days of the date of the filing of the complete application.
- G. The Finance Director may deny a new application or application for renewal if:
 - 1. The individual applicant, or a director or officer of a corporation, partner of a partnership, manager of a limited liability company or manager of the lodging facility, has had a lodging facility license revoked or suspended within five (5) years prior to the application.
- H. The Finance Director may deny or conditionally grant an application for a license if:
 - 1. The application or any City investigation demonstrates or establishes that the proposed lodging facility fails to satisfy the requirements of the Code.
 - 2. One or more significant criminal acts has occurred on the premises within 365-days prior to the date the application was submitted.
 - 3. The existing lodging facility's CFS ratio is at or above 2.25 (two-and-one-quarter) calls for service per room or the lodging facility has other compliance issues, and the applicant or licensee has not provided, as a prerequisite to being granted a license, a remedial plan to reduce the CFS ratio or resolve the other compliance issues that is deemed acceptable by the Finance Director. The applicant must reduce the CFS ratio or resolve the issues within 180 days after license is issued or be subject to license suspension or revocation.

3.08.160 Decision – New Applications; Appeal.

- A. If the Finance Director approves a license application, the Finance Director shall make a written finding that the application conforms to the requirements of this Chapter based on the information available and the investigation performed by the City.
- B. In the event the Finance Director denies a license application or grants a license subject to conditions, the Finance Director shall prepare written findings of fact stating the reasons or basis for the denial or the imposition of conditions. The Finance Director shall, within ten (10) days after the date of the Finance Director's denial or imposition of conditions, send a copy of the Finance Director's findings by certified mail, return receipt requested, to the address of the applicant.
- C. In the event the Finance Director denies a license application or imposes conditions on such license, applicant or aggrieved party may appeal the decision under Section 3.08.110.B.
- D. Any final, written decision of the Finance Director must be appealed, if at all, in the District Court of Weld County pursuant to Rule 106, Colorado Rules of Civil Procedure.
- E. Hearings concerning revocation of an accommodations tax license are governed by the procedure set forth in Section 3.04.500.O of this Code.

Section 2. Publication and Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the City Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and City Clerk, and by the Certificate of Publication. This Ordinance shall become effective upon final passage.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. Limited Repeal. Only parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed. This ordinance does not repeal or amend sections 3.08.030; 3.08.040; 3.08.050; 3.08.060; 3.08.080; 3.08.090. In addition, this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 17th DAY OF AUGUST, 2021.

ATTEST:

CITY OF EVANS, COLORADO

Julie Kamka, City Clerk

By: _____
Brian Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS 7th DAY OF SEPTEMBER, 2021.

ATTEST:

CITY OF EVANS, COLORADO

Julie Kamka, City Clerk

By: _____
Brian Rudy, Mayor