



# MEMO

## Mayor

To: Common Council  
From: Mayor Tony Penterman  
Date: 08/01/2022  
Re: Day's Inn Room Tax

This memo is to bring your attention to a pressing matter regarding the Day's Inn hotel operator's failure to fulfill their room tax obligations. As of the latest update, the operator is now three quarters behind on paying the required room taxes, causing significant concerns for both City staff and the room tax commission.

Despite continuous efforts by City staff to assist the operator in establishing an efficient tax collection process, no progress has been made. It is evident that a streamlined approach is desperately needed to avoid further delays and unpaid taxes. Our recommended solution is straightforward and in line with adopted Ordinance 1773:

1. The operator must collect the room tax from guests.
2. All collected room taxes should be deposited into a designated account.
3. A comprehensive quarterly report, along with the corresponding payment, must be submitted to the room tax commission fiscal agent within 30 days after the end of each quarter.

Failure to adhere to this process has resulted in mounting issues for City staff and room tax commission personnel. Both are expending additional staff time and resources to chase down outstanding payments.

To rectify this situation, we've set a deadline of July 31, 2023, for the Day's Inn hotel operator to settle all outstanding room taxes. Failure to meet this deadline, the city must take decisive action to enforce compliance. In 2018, a similar situation necessitated the issuance of a cease-and-desist order to the same operator, which proved effective in resolving the delinquent room taxes.

### **Recommended Action:**

Grant the City Attorney permission to initiate the legal action of a cease-and-desist order against the Day's Inn Hotel operator. This step is crucial in ensuring that all past due room taxes are promptly paid.

### **3.14 Room Tax**

1. *Definitions.* In addition to those terms defined in this section, the terms used in this Ordinance shall have the definition, if any, ascribed to them in Wis. Stats. § 66.0615.

*ARA* shall mean the redevelopment authority of the City of Appleton, Wisconsin, a Wisconsin body politic and corporate.

*CVB* shall mean the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin corporation.

*Exhibition center bonds* shall mean the Redevelopment Authority of the City of Appleton, Wisconsin Taxable Lease Revenue Bonds, Series 2018 (Fox Cities Exhibition Center Project), issued to finance or refinance the construction and related costs of the Fox Cities Exhibition Center, and any additional bonds issued to refinance said bonds.

*Fiscal Agent* shall mean a financial institution acting in the capacity as an agent on behalf of the City for the receipt and allocation of the Room Taxes in accordance with this Ordinance.

*Fiscal Agency Agreement* shall mean an agreement entered into by and among the Municipalities, the Room Tax Commission, and the Fiscal Agent that sets forth the duties of the Fiscal Agent with respect to the Room Taxes as described in this Ordinance.

*Fox Cities Tourism Zone* shall mean that geographic area encompassing the City of Appleton, Wisconsin; the City of Kaukauna, Wisconsin; the City of Neenah, Wisconsin; the Village of Kimberly, Wisconsin; the Village of Little Chute, Wisconsin; the Town of Grand Chute, Wisconsin; the Town of Neenah, Wisconsin; the Village of Fox Crossing, Wisconsin; the City of Menasha, Wisconsin, the Village of Sherwood, Wisconsin, and that may in the future include any municipality that hereafter becomes a party to the Room Tax Commission Agreement.

*Operators* shall mean hotelkeepers, motel operators, lodging marketplaces, owners of short-term rentals, and other persons furnishing accommodations that are available to the public, which are located in the City and are obligated to pay Room Taxes under this Ordinance.

*Pledge Agreement* shall mean any pledge agreement entered into by the Municipalities and the Room Tax Commission, pursuant to which a portion of the Room Tax is pledged to pay a particular project or purpose in furtherance of the purposes of the Room Tax set forth in this Ordinance, which includes the Exhibition Center Bonds and any Tourism Facilities Bonds.

*Quarterly Payment Date* shall mean each January 31, April 30, July 31, and October 31, each of which is the last day of the month next succeeding the end of a calendar quarter.

*Room Tax* shall mean a tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by the Operators, pursuant to the Room Tax Act.

*Room Tax Act* shall mean Wis. Stats. § 66.0615, as amended from time to time.

*Fox Cities Room Tax Commission* shall mean the Fox Cities Room Tax Commission created by the Municipalities within the Fox Cities Tourism Zone pursuant to the Room Tax Commission Agreement in order to coordinate tourism promotion and tourism development within the Fox Cities Tourism Zone.

*Room Tax Commission Agreement* shall mean the Amended and Restated Room Tax Commission Agreement, dated as of November 24, 2015 entered into by and among the Municipalities and the Room Tax Commission, as amended from time to time.

*Tourism Facilities Bonds* shall mean any one or more series of bonds issued to finance or refinance the construction and related costs of projects undertaken by or on behalf of the Municipalities in furtherance of the Tourism Facilities Room Tax, and any additional bonds



issued to refinance said bonds.

*PAC bonds* shall mean those bonds issued by the ARA to partially fund construction of the Fox Cities Performing Arts Center.

2. *Imposition of room tax.* Pursuant to the Room Tax Act, there is hereby imposed a 10% Room Tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients, by the Operators. Operators shall remit all Room Taxes to (i) the City's Clerk/Treasurer or (ii) to a Fiscal Agent on behalf of the City pursuant to a Fiscal Agency Agreement in accordance with the requirements of this Ordinance and the Room Tax Act. Such 10% Room Tax shall be allocated as follows:
  - a. A 2.85% Room Tax shall be imposed and allocated toward the support of the CVB, to be used for the promotion of the Fox Cities Tourism Zone as a tourism destination (the "CVB Room Tax").
  - b. A 3% Room Tax shall be imposed (subject to sunset as provided in subsection (C) hereof) and allocated toward payment of debt service on the Exhibition Center Bonds in accordance with a Pledge Agreement (the "Exhibition Center Room Tax").
  - c. A 3% Room Tax shall be imposed and allocated toward the support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel, motel, or other lodging establishment within the Fox Cities Tourism Zone (the "Tourism Facilities Room Tax").
  - d. A 1.15% Room Tax shall be imposed and retained by the City to be used for general tourism support and development in the Fox Cities Tourism Zone in accordance with the requirements of the Room Tax Act (the "Municipal Room Tax").
  - e. The City or its Fiscal Agent shall forward the Room Taxes it has received, to be used as described above, to the following parties: (i) the CVB Room Tax to the CVB, (ii) the Exhibition Center Room Tax as required under the related Pledge Agreement, (iii) the Municipal Room Tax to the City, and (iv) the Tourism Facilities Room Tax to the Room Tax Commission or its designees on its behalf (including the CVB), or as otherwise required under a Pledge Agreement.
3. *Expiration of Exhibition Center Room Tax.* The Exhibition Center Room Tax shall sunset and expire upon payment in full of all outstanding Exhibition Center Bonds and any related outstanding fees or expenses therefor, at which time the Room Tax shall be reduced by 3% with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. Notwithstanding the foregoing, Operators may not discontinue collection of the Exhibition Center Room Tax until the City provides notice that the Exhibition Center Room Tax has been terminated by operation of this Ordinance. After all outstanding Exhibition Center Bonds are paid in full, any excess Exhibition Center Room Tax revenues collected that are not needed to pay the Exhibition Center Bonds or any related outstanding fees or expenses shall be forwarded to the CVB and reallocated to the purposes of the Tourism Facilities Room Tax.
4. *Priority of payment.* In the event any Operator fails to remit the entire Room Tax amounts due on any Quarterly Payment Date under this Ordinance, the City directs that the amounts actually received by the City (or its Fiscal Agent) shall be applied in the following priority order:
  - a. first, to the CVB Room Tax until paid in full;
  - b. second, to the Exhibition Center Room Tax, if any, until paid in full;
  - c. third, to the Tourism Facilities Room Tax until paid in full; and
  - d. fourth, to the Municipal Room Tax.



5. *Tourism entity.* The CVB shall act as the "tourism entity," as that term is defined in the Room Tax Act, for purposes of providing staff, support services and assistance to the Room Tax Commission in developing and implementing programs to promote the Fox Cities Tourism Zone to visitors, as more fully set forth in an agreement between the Room Tax Commission and the CVB. The CVB may also hold and administer the Tourism Facilities Room Tax on behalf of the Room Tax Commission in furtherance of the purpose of the Tourism Facilities Room Tax, except when a related Pledge Agreement is in effect.
6. *Collection and administration of room tax: Operator Reports.* This Ordinance shall be administered by the City's Clerk. The Room Tax imposed by this Ordinance shall be payable on each Quarterly Payment Date to the City (or to a Fiscal Agent on behalf of the City pursuant to a Fiscal Agency Agreement). A report shall be filed by each Operator with the City's Clerk/Treasurer (or with a Fiscal Agent) on or before each Quarterly Payment Date. Such report shall show the gross room receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of Room Tax imposed for such period, and such other information as the City deems necessary. Every Operator required to file such quarterly report shall, with its first report, elect to file an annual report based on either the calendar year or its fiscal year. Such annual report shall be filed within 90 days after the close of each such calendar or fiscal year. The annual report shall summarize the quarterly reports, shall reconcile and adjust for errors in the quarterly reports, and shall contain certain such additional information as the City requires. Such annual reports shall be signed by a representative of the Operator or its duly authorized agent, but need not be verified by oath. The City may, for good cause, extend the due date for filing any report, but in no event shall such extension be longer than one month after the due date.
7. *Operator Permit required.* Every Operator is required under this Ordinance to file with the City's Clerk an application for a permit for each place of business that is required to pay Room Tax hereunder. Every application for a permit shall be submitted to the City's Clerk using a form prescribed by the City and shall set forth the name under which the Operator transacts or intends to transact business, the location of its place of business, and such other information as the City requires. The application shall be signed by the owner of the Operator if a sole proprietor and, if not a sole proprietor, by an authorized representative of such Operator. Together with the permit application, each Operator shall pay the City an initial fee of \$20.00 for each permit. A permit issued hereunder is non-transferable.
8. *Penalty for violations.* In addition to the Schedule of Forfeiture described in subsection (J) hereof, any Operator in violation of the terms of this Ordinance by failing to obtain a permit shall be subject to a penalty not to exceed \$200.00 for each violation. Each room or unit separately rented or offered for rent, and each day of such rental or offer for rental of such unit shall be a separate violation. In addition, injunctive relief is hereby authorized to discontinue any violation of this Ordinance. Any Operator deemed to have violated any of the provisions of this Ordinance shall be obligated to pay the costs of prosecution, in addition to actual attorney fees expended in the course of said enforcement. The City may revoke or suspend any permit issued hereunder for failure to comply with the provisions hereof.
9. *Liability for tax on sale or transfer of business.* If any Operator sells or transfers all or substantially all of its interest in its hotel, motel or other lodging accommodation, its successors or assigns shall withhold sufficient amounts from the purchase price to pay any amount of Room Tax liability due through the sale or transfer date until the Operator produces a receipt from the City's Treasurer that its liability has been paid in full or a certificate stating that no Room Tax amount is due. If a successor Operator fails to withhold such amount from the purchase price as required, such successor Operator shall become liable for payment of the Room Tax amount it is required to withhold.
10. *Schedule of forfeiture.* In addition to paying the Room Taxes due hereunder, any Operator that has failed to pay any Room Tax when due shall be required to pay a forfeiture in an amount

equal to 25% of the Room Tax due from the Operator to the City for the previous year and unpaid, or \$5,000, whichever is less, for failure to pay the Room Tax due hereunder.

11. *Confidentiality of information.* To the extent permitted under the law, the information provided to the City under Section 66.0615 (2) of the Wisconsin Statutes shall remain confidential; provided, however, that the City or any employee thereof may use such information in the discharge of duties imposed by law or of the duties of their office or by order of a court. Persons violating the provisions of this subsection may be required to forfeit not less than \$100 nor more than \$500.
12. *Enforcement.* The city shall enforce this article in accordance with the Room Tax Act.

(Code 2011, § 3.14)

HISTORY

Repealed & Replaced by Ord. [1773](#) on 5/2/2018