

STATE OF GEORGIA

TOWN OF TYRONE

ORDINANCE

NO. 2022-__

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE TOWN OF TYRONE, GEORGIA; TO LEVY AND ASSESS A TAX ON TOURIST ACCOMMODATIONS IN THE TOWN OF TYRONE; TO ESTABLISH PROVISIONS PERTAINING TO COLLECTION OF SAID TAX; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF TYRONE AND IT IS HEREBY ENACTED PURSUANT TO THE AUTHORITY OF THE SAME THAT THE CODE OF ORDINANCES OF THE TOWN OF TYRONE AS IT PERTAINS TO TAXATION (ARTICLE II OF CHAPTER 22), BE AMENDED AS FOLLOWS:

Section 1. By adding a new Division 6, pertaining to “Hotel/Motel Excise Tax”, to Article II of Chapter 22, to be numbered and read as follows:

DIVISION 6. HOTEL/MOTEL EXCISE TAX.

Sec. 22-140. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Guestroom shall mean a room occupied or intended, arranged or designed for occupancy by one or more occupants and used for that purpose and where overnight occupancy is allowed.

Hotel/motel shall mean any tourist accommodation.

Monthly period shall mean any calendar month of any year.

Occupant shall mean any person who, for a consideration, uses, possesses or has the right to use or possess any guestroom in a hotel under any lease, concession, permit, right of access, license to use or other agreement or otherwise.

Operator shall mean any person operating a hotel (as defined in this division) in the Town of Tyrone, including but not limited to the owner or proprietor of the premises, lessee, sub lessee, lender in possession, or any other person otherwise operating a hotel.

Permanent resident shall mean any occupant as of a given date who has or shall have occupied or shall have the right of occupancy of any guestroom in a hotel for at least 30 consecutive days next preceding that date. The right of occupancy for at least 30 consecutive days is clearly established through the advance payment of 30 days' rent or a lease that has been signed in excess of 30 days.

Rent shall mean 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 operator to the occupant, without any deduction therefrom.

Tax shall mean the tax imposed by this division.

Tourist accommodation shall mean any property, facility, or structure providing accommodations for value to the public for not more than 30 consecutive days.

Town shall mean the Town of Tyrone, Georgia, and, variously, the incorporated territory of the Town of Tyrone, wherein the Town of Tyrone, Georgia, is empowered to impose this tax by O.C.G.A. § 48-13-50 *et seq.*

Town manager shall mean the duly appointed town manager of the Town of Tyrone, Georgia, or his or her designee.

Sec. 22-141. Imposition and rate of tax.

Pursuant to O.C.G.A. § 48-13-51(a)(1), there is hereby levied and assessed, and there shall be paid, a tax of three percent of the rent for every occupancy of a tourist accommodation in which rooms, lodgings, or accommodations are furnished for value in the town. The tax imposed by this division shall be paid upon any occupancy on and after April 1, 2022, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid, or charged or billed, or falls due on either a weekly, monthly or other less than 30 day basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period from April 1, 2022, and any monthly period thereafter. The

proceeds of the lodging tax will be used in accordance with O.C.G.A. § 48-13-51(a)(2).

Sec. 22-142. Persons liable for tax; extinguishment of liability.

Every person occupying a guestroom in a tourist accommodation in the town is liable for the tax. This liability is not extinguished until the tax has been paid to this town except that a receipt from an operator naming a place of business in this town or from an operator who is authorized by the town manager under such rules and regulations as he or she may prescribe, to collect the tax and who is, for the purposes of this division, regarded as an operator maintaining a place of business in the town, which receipt is given to the occupancy pursuant to section 22-143, is sufficient to relieve the occupancy from further liability for the tax to which the receipt refers.

Sec. 22-143. Collection of tax by operator; receipt to occupant; rules for collection schedules.

Every operator maintaining a place of business in the town, as provided in the next preceding section, and renting guest rooms in the town, not exempted under this division, shall, at the time of collecting rent from the occupant and on demand shall give to the occupant a receipt therefore. In all cases of transactions upon credit or deferred payment, the payment of tax to the operator may be deferred in accordance therewith, and the operator shall be liable therefore at the time and to the extent that such credits are

incurred in accordance with the rate of tax owing on the amount thereof. The town manager shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax.

Sec. 22-144. Unlawful advertising regarding tax.

It is unlawful for any operator to advertise or hold out or state to the public or to any guest directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rental of the guest room, or that, if added, it or any part thereof, will be refunded.

Sec. 22-145. Exemptions.

No tax shall be imposed hereunder:

- (1) Upon fees, rents, or charges made for continuous use of any tourist accommodation after the first 30 days of continuous occupancy.
- (2) Upon the fees or charges for any tourist accommodation furnished for a period of one or more days for use by state or local government officials or employees when traveling on official business.
- (3) Upon charges made for any accommodations provided to any persons who certify by affidavit that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty.

Sec. 22-146. Registration of operator; form and contents; execution; certificate of authority.

Every person engaging or about to engage in business as an operator of a tourist accommodation in the town shall immediately register with the town manager on a form provided by the town manager. Persons engaged in such business must so register not later than 15 days after the date this division becomes effective and the tax is imposed as set forth in the ordinance, but such privilege of registration after the imposition of such tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof, regardless of registration. Such registration shall set forth the same name under which such person transacts business or intends to transact business, the location of his or her place or places of business and such other information which would facilitate the collection of the tax as the town manager may require. 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 the case of ownership by a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The town manager shall, after such registration, issue without charge a certificate of authority to each operator to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable and shall prominently display therein so as to be seen and to come readily to

the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and nontransferable and shall be returned immediately to the town manager upon the cessation of business at said location.

Sec. 22-147. Determination; returns and payments.

- (a) *Due date of taxes.* The tax imposed by this division shall become due and payable from the occupant at the time of occupancy of any tourist accommodation in the town. All amount of such taxes collected by any operator shall be due and payable to the town manager monthly on or before the twentieth day of every month next succeeding such respective monthly period as set forth in this ordinance.
- (b) *Return; time of filing; persons required to file; execution.* On or before the twentieth day of the month following each monthly period a return shall be filed with the town manager in such form as the town manager may prescribe, by every operator, liable for the payment of tax hereunder. For purposes of this section, a return shall be deemed filed if postmarked on the twentieth day, or, if the twentieth day falls upon a holiday recognized by the State of Georgia or upon a Saturday or Sunday, then a return postmarked on the next business day shall be regarded as timely filed.
- (c) *Contents of return.* All returns shall show the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for the related period, and such other information as may be required by the town manager.

Sec. 22-148. Delivery of return and remittance.

The person required to file the return shall deliver the return, together with the remittance of the net amount of tax due to the town at 950 Senoia Road, Tyrone, Georgia 30290.

Sec. 22-149. Collection fee allowed operators.

Operators 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 said amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions as provided in O.C.G.A. § 48-13-52, as now or hereafter amended.

Sec. 22-150. Deficiency determinations.

- (a) *Recomputation of tax; authority to make; basis of recomputation.* If the town manager is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the town by any person, he or she may compute and determine the amount required to be paid upon the basis of any information within his or her possession or that may come into his or her possession. One or more than one deficiency determinations may be made of the amount due for one or more than one monthly period.
- (b) *Interest on deficiency.* The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof from the

twentieth day after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

(c) *Offsetting of overpayments.* In making a determination the town manager may offset overpayments, for a period or periods, against underpayments, for another period or periods, against penalties, and against the interest on underpayments. The interest on underpayments shall be computed in the manner as set forth in subsection (b) of this section.

(d) *Penalty for fraud or intent to evade.* If any part of the deficiency for which a deficiency determination is made due to fraud or an intent to evade any provisions of this division or other authorized rules and regulations, a penalty of 50 percent of the total amount of taxes due, exclusive of penalties, shall be added thereto in addition to the other penalties provided in this division.

(e) *Notice of town manager's determination; service of.* The town manager, or his or her designated representative, shall give to the operator written notice of his or her determination. The notice may be served personally or by mail; if by mail such service shall be addressed to the operator at his or her address as it appears in the records of the town manager. In case of service by mail of any notice required by this division, the service is complete at the time of deposit in the United States Post Office.

(f) *Time within which notice of deficiency determination to be mailed.* Except in the case of fraud, intent to evade this division or authorized rules or regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three

years after the 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.

Sec. 22-151. Determination if no return made.

(a) *Estimate of gross receipts.* If any person fails to make a return, the town manager shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total rentals in the town which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is or may come to the possession of the town manager. Upon the basis of this estimate the town manager shall compute and determine the amount required to be paid the town, adding to the sum thus determined any applicable penalties. One or more determinations may be made for one or for more than one period.

(b) *Manner of computation; offsets; interest.* In making a determination the town manager may offset overpayments for a period or penalties, and against the interest on the under payments. The interest on under payments shall be computed in the manner set forth in this division.

(c) *Interest on amount found due.* The amount of the determination, exclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof, from the twentieth day of the month following the monthly period, for which the amount or

any portion thereof should have been returned, until the date of payment.

(d) *Penalty for fraud or intent to evade.* If the failure of any person to file a return is due to fraud or an intent to evade this division or rules and regulations, a penalty of 50 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the other penalties provided in this division.

(e) *Giving of notice; manner of service.* Promptly after making his or her determination, the town manager shall give the person written notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 22-152. Penalties and interest for failure to pay tax.

(a) When any operator fails to make any return or to pay the full amount of the tax imposed by this division, a penalty shall be added to the tax in the amount of three percent or three dollars, whichever is greater, if the failure is for not more than 30 days. An additional penalty of three percent or three dollars, whichever is greater, shall be added for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation under this section shall not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. The penalty imposed herein shall be in addition to the tax, any other penalties, and interest on the unpaid tax as set forth in this division.

(b) The amount of the unpaid tax, exclusive of penalties, shall bear interest at the rate

of one percent per month, or fraction thereof, from the 20th day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until the date of payment.

Sec. 22-153. Collection of tax.

(a) *Security, exaction by town manager; amount; sale of; notice of sale; return of surplus.* The town manager, whenever he or she deems it necessary to insure compliance with this division, may require any person subject thereto to deposit with him or her such security as the town manager may determine. The amount of the security shall be fixed by the town manager but shall not be greater than twice the person's estimated average liability for the period for which he or she files returns, determined in such a manner as the town manager deems proper, or \$5,000.00, whichever amount is the lesser. The amount of the security may be increased by the town manager subject to the limitations herein provided. The town manager may sell the security at public auction, with the approval of the mayor and council, if it becomes necessary so to do in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his address as it appears in the records of the town manager. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

(b) *Action for tax; time for.* At any time within three years after any tax or 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 town manager may bring action in the courts of this state, or any other state, or of the United States in the name of the town to collect the amount delinquent together with penalties and interest, court fees, filing fees, attorney's fees and other legal fees incident thereto. The bringing of such an action shall not be a prerequisite for the issuance of a fi. fa. under the provisions of subsection (g) hereof.

(c) *Duty of successors or assignees of operator to withhold tax from purchase money.* If any operator liable for any amount under this division sells out his or her business or quits the business, his or her successors or assigns shall withhold a sufficient portion of the purchase price to cover such amount until the former owner produces a receipt from the town manager showing that he or she has been paid or a certificate stating that no amount is due.

(d) *Liability for failure to withhold; certificate of notice of amount due; time to enforce successor's liability.* If the purchaser of a business fails to withhold purchase price as required in subsection (c) hereof, the purchaser shall become personally liable for the payment of the unpaid taxes. Within 30 days after receiving a written request from the purchaser for a certificate, the town manager shall either issue the certificate or mail notice to the purchaser at the address as it appears on the records of the town manager of the amount that must be paid as a condition of issuing the certificate. The time within

which the obligation of a successor may be enforced shall start to run at the time the operator sells out his or her business or at the time that the determination against the operator becomes final, whichever event occurs the later. Any purchaser that fails to withhold from the purchase price the amount of unpaid taxes or fails to pay any amount of such tax for which it becomes liable as a result of said purchase shall not be permitted to obtain an occupation tax certificate or alcoholic beverage license until all such taxes, including all penalties and interest, have been paid in full.

(e) *Tax credit, 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 town under this division, it may be offset as provided in section 22-150(c). If the operator or person determines that he or she has overpaid or paid more than once, which fact has not been determined by the town manager, he or she will have three years from date of payment to file claim in writing stating the specific ground upon which claim is founded. The claim shall be audited by the town. If the claim is approved by the town manager, the excess amount paid the town may be credited on any amounts then due and payable from, the person by whom it was paid, or his or her administrators or executors.

(f) *Lien for taxes.* The lien of taxes collectible under the provisions of this division shall date from January 1 of the year in which the taxes become due, and the lien of such taxes shall be a special lien on the property upon which the same are due and a general lien against all property of the taxpayer owing same.

- (g) *Town manager authorized to issue fieri facias.* The town manager is hereby authorized to issue a fieri facias (fi. fa.) for execution and levy to satisfy the amount of any tax, penalty, or interest due but not paid under the provisions of this division.
- (h) *Eligibility for occupational tax and/or alcoholic beverage license.* Any person who fails to pay the tax imposed herein to the town or fails to pay any amount of such tax required to be collected and paid to the town shall not be permitted to obtain or renew their occupation tax certificate or alcoholic beverage license until all such taxes, including all penalties and interest, have been paid in full.

Sec. 22-154. Administrator of excise tax.

- (a) *Authority of town manager.* The town manager shall administer and enforce the provisions of this division for the levy and collection of the tax imposed by this division.
- (b) *Rules and regulations.* The town manager shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this division, other laws or ordinances of the town and the state, or the constitution of this state or the United States for the administration and enforcement of the provisions of this division and the collection of the taxes hereunder.
- (c) *Records required from operators, etc.; form.* Every operator renting guest rooms in the town to a person shall keep such records, receipts, invoices, and other pertinent papers in such form as the town manager may require.
- (d) *Examination of records; audits.* The town manager or any person authorized in

writing by the town manager may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting guest rooms to a person and any operator liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(e) *Authority to require reports; contents.* In administering the provisions of this division, the town manager may require the filing of reports by any person or class of persons having in such person's or persons' possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed with the town manager when required by the town manager and shall set forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the town manager may require.

(f) *Disclosure of business of operators, etc.; limitations on rule.* The town manager or any person having an administrative duty under this division shall not make known in any manner the business affairs, operations or information obtained by an audit of books, papers, records, financial reports, equipment and other facilities of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not having such administrative duty under this division, except in case of judicial proceedings or other proceedings necessary to collect the tax hereby levied and assessed, or as required by the Georgia

Open Records Act. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of unpaid tax or amounts of tax required to be collected, interest and penalties.

Sec. 22-155. Violations.

(a) Any person violating any of the provisions of this division shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in Section 1-17 of the Code of Ordinances of the Town of Tyrone. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this division is committed, continued, or permitted by such person, and shall be punished accordingly.

(b) Any operator or other person who fails to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the town manager or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof shall be punished as aforesaid. Any person required to make, render, sign, or verify any report who makes any false or fraudulent report, with intent to defeat or evade the termination of an amount due required by this division to be made shall be deemed guilty of an offense and upon convictions thereof shall be punished as aforesaid.

Sec. 22-156. Proceeds of tax.

The proceeds of the hotel, motel, tax will be used in accordance with the provisions of O.C.G.A. 48-13-51(a)(2).

Secs. 22-157 through 22-164. RESERVED.

Section 2. This ordinance shall become effective immediately upon its adoption by the Mayor and Council of the Town of Tyrone.

Section 3. All other ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. In any event any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect other sections, subsections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and effect as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not a part thereof. The Mayor and Council hereby declare that they would have passed the remaining parts of this Ordinance if they had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

SO ENACTED this ____ day of _____, 2022.

MAYOR AND COUNCIL OF
THE TOWN OF TYRONE

By: _____
Eric Dial, Mayor

(SEAL)

ATTEST:

Dee Baker, Town Clerk

Approved as to form:

Town Attorney