

**AN ORDINANCE OF
THE CITY OF EAST ELLIJAY
PURSUANT TO ITS' CHARTER AND OTHER LAWS**

PASSED: 04/17/2024

ORDINANCE NO. 2024-01

AN ORDINANCE BY THE CITY COUNCIL FOR THE CITY OF EAST ELLIJAY TO REPEAL AND REPLACE THE EXISTING EXCISE TAX ORDINANCE CODIFIED AT SECTION 70-141 to 70-159, AND FOR OTHER PURPOSES.

WHEREAS, the City wishes to repeal and replace its' Rooms, Lodging and Accommodations Excise Tax Ordinance (as amended) as authorized by its Charter and Georgia law; and

WHEREAS, the City has the authority under the City Charter and the general laws of the State of Georgia to enact ordinances within the permitted range of O.C.G.A. § 48-13-51 without enactment of a local act by the General Assembly; and

WHEREAS, the City believes enactment of this ordinance will bring the City's excise tax rates into the low range of the tax rates of similar jurisdictions and is in the best interest of the citizens of East Ellijay;

IT IS HEREBY ORDAINED BY THE GOVERNING AUTHORITY OF
THE CITY OF EAST ELLIJAY AND ADOPTED;

SECTION I

Excise Tax on Rooms, Lodgings, and Accommodations

Sec. 1-1. Short title.

This subdivision shall be known as the Hotel-Motel Excise Tax Ordinance of the City of East Ellijay.

Sec. 1.2. Intent, purpose, and authorization to levy excise tax.

- (a) The intent of this subdivision is to levy an excise tax on rooms, lodgings, and accommodations to provide additional funding for the promotion of tourism, conventions, and trade shows in the City and for other legal purposes as provided by O.C.G.A. § 48-13-51(a)(2).
- (b) The purpose of this subdivision is to enact an excise tax upon the furnishing for value to the public of any rooms, lodgings or accommodations furnished by any person or legal entity licensed by or required to pay business or occupational taxes to the City for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, rental cabin or any other place in which rooms, lodgings, or accommodations are regularly furnished for value.

Sec. 1.3. Definitions.

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

City means the territorial limits of the city under the governing authority of the City council and Mayor.

City clerk means the duly appointed city clerk, or his/her designee.

Destination marketing organization means a private sector nonprofit organization or other private entity which is exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit their destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed (O.C.G.A. § 48-13-50.2(1)).

Due date means the 20th day after the close of monthly period for which tax is to be computed. (O.C.G.A. § 48-13-53.2(a)).

Guest room means accommodations occupied, or intended, arranged, or designated for transient occupancy of not more than 30 continuous days (O.C.G.A.

§ 48-13-51(h)(4)), by one or more occupants for the purpose of living quarters or residential use.

Hotel means and includes any hotel, motel, inn, lodge, tourist camp, travel trailer park, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value and shall apply to the furnishing for value of any room, lodging, or accommodation. (O.C.G.A. § 48-13-51(a)(1)(B)(i)).

Monthly period means any calendar month of any year.

Occupancy means the use or possession, or the right to use or possession, of any room or apartment in a hotel or motel, or the right to use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or apartment.

Occupant means any person (or persons utilizing as a single unit) who, for a consideration, uses, possesses, or has the right to use or possess, any room or hotel or motel or travel trailer space under any lease, concession, permit, right of access, license, agreement or otherwise.

Operator or lodging provider means any person, partnership, or any other form of entity who is subject to taxation under this article for the furnishing for value to the public any rooms, lodgings, travel trailer spaces or accommodations.

This includes, without limitation, any owner, operator, proprietor, lessee, lender in possession, or any other person otherwise operating a hotel. (O.C.G.A. § 48-13-50.2(2))

Permanent resident means any occupant who as of a given date shall have occupied, or has or shall have the right of occupancy, of any guest room in a hotel for more than 30 consecutive days.

Person means an individual, firm partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust receiver, trustee, syndicate, business entity, or any other group or combination acting as a unit, to include the plural as well as the singular number, excepting, however, the United States of America, the state, and any political subdivision of either thereof upon which the governing authority of the city is without power to impose the tax herein provided.

Promoting tourism, conventions, and trade shows means the planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows (O.C.G.A. § 48-13-50.2(4)).

Rent means 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 lodging provider to the occupant, without any deduction therefrom whatsoever.

Return means the primary documentation produced by a hotel or other facility that demonstrates interaction between the operator and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the dates of occupancy, the amount of rent charged for each date together with the amounts of applicable excise taxes, and the methods of payment.

State authority means an authority created by state law which serves a state-wide function, including, but not limited to, the state agricultural exposition authority, state aviation authority, state building authority, state development authority, state environmental finance authority, Jekyll Island Authority, Lake Allatoona Preservation Authority, state medical center authority, state ports authority, state regional transportation authority, state road and tollway authority, Sports Hall of Fame Authority, state technology authority, and state world congress center authority, but shall not mean an authority created for support of a local government or a local purpose or function and shall not include authorities such as area planning and development commissions and any organizational

entities they may create, regional commissions and any organizational entities they may create, or local water and sewer authorities. (O.C.G.A. § 48-13-50.2(5)).

Tax means the excise tax of five percent on occupants imposed by this subdivision, as provided for by O.C.G.A. § 48-13-51(b).

Travel trailer means any moveable vehicle or structure, including trailers, campers, vans, buses, motor homes or other recreational vehicles.

Travel trailer park means a facility providing space for the parking of travel trailers.

Sec. 1.4. Imposition and rate of tax and effective date.

There is hereby set and levied on the occupant of a guest room of any hotel/motel/cabin/residence/lodge, short-term rental or travel trailer space located within the City a tax in the amount of five percent (5%) of the gross rent for such occupancy. These provisions shall take effect on June 1, 2024. All taxes due and payable prior to June 1, 2024, under the previous Code section shall remain due and payable pursuant to the previous provisions of this Code.

Sec. 1.5. Exemptions.

In accordance with O.C.G.A. § 48-13-51(h), the tax imposed by this ordinance shall not apply to:

- (1) Charges made for any rooms, lodgings, or accommodations provided to any persons who certify 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 or are a permanent resident;
- (2) The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge;
- (3) Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a state or local government official or employee traveling on official business for purposes of the exemption provided by this section. For the purpose of the exemption provided under this subsection, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; or

- (4) Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy.

(O.C.G.A. § 48-13-51(h)).

Sec. 1.6. Use of revenue.

Pursuant to O.C.G.A. § 48-13-51(a)(3), of the amount of taxes collected at the rate of five percent as provided herein, an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of three percent shall be utilized for the purpose of:

- (1) Promoting tourism, conventions, and trade shows;
- (2) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;
- (3) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987;
- (4) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded

prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds;

- (5) Supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county one percent sales and use tax authorized by O.C.G.A. § 48-8-110 et seq., as amended and if such facility was substantially completed and in operation prior to December 31, 1993; or

- (6) For some combination of such purposes or other legal purpose.

Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities.

Sec. 1.7. Collection of tax by operator.

Every operator maintaining a place of business in the city and renting guest rooms or travel trailer space in the city, not exempted, shall collect a tax of three

percent (3%) prior to June 1, 2024, and a tax of five percent (5%) on or after June 1, 2024, on the amount of rent from the occupant.

Sec. 1.8. Registration of operator; certification of authority.

Should returns consistently be deficient, the City may require every person engaging or about to engage in business as an operator of a hotel, motel, or travel trailer park in the city to register with the city clerk on a form provided by the city clerk. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his places of businesses, and such other information which would facilitate the collection of the tax as the city clerk may require. The registration shall be signed by the owner if a natural person; in case of ownership by corporation, by an officer. The city clerk 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.

Sec. 1-9. Determination, returns and payments.

- (a) Due date of taxes. The tax imposed by this article shall be due and payable to the city monthly on the 20th day of the month next succeeding the monthly period in which it accrued.

- (b) Return; time of filing; persons required to file contents. On or before the 20th day of each month, a return for the preceding monthly period shall be filed with the city clerk showing the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due, and such other information as may be required by the city clerk.
- (c) Collection fee allowed operators. Operators collecting tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction from the amount due, if such amount is not delinquent at the time of payment. The rate of the deduction shall be three percent of the amount due, but only if the amount due was not delinquent at the time of payment.

Sec. 1-10. Deficiency determinations.

- (a) Re-computation of tax; authority to make basis of re-computation. If the city clerk is not satisfied with the return filed by any person pursuant to this article, he or she may compute and determine the amount required to be paid upon the basis of any information available to the Clerk. One or more deficiency determinations may be made of the amount due for one or more monthly periods.

- (b) Interest on deficiency. The amount of any deficiency determination shall bear interest at the rate of one percent per month or fraction thereof from the due date of the taxes.
- (c) Service of notice of determination. The city clerk or a designated representative shall give to the operator written notice of any deficiency determination. The notice may be served personally or by certified mail/statutory overnight delivery; if by certified mail such service shall be addressed to the operator at his address as it appears in the records of the city clerk. Service by certified mail is complete upon the signing by the addressee of the return receipt acknowledging delivery. Except in the case of 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 is later.

Sec. 1-11. Determination if no return made.

- (a) Estimate of gross receipts. If any person fails to make a return, the city clerk 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 of such person that are subject to the tax. The estimate shall be made for the periods in respect to

which the person failed to make the return and shall be based upon any information which is or may come into the possession of the city clerk. Written notice shall be given in the manner prescribed herein.

- (b) Interest on amount found due. The amount of such determination 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. 1-12. Miscellaneous administrative provisions.

- (a) Authority of city clerk. The city clerk shall administer and enforce the provisions of this article relating to the collection of the tax imposed by this article. The city clerk may utilize the city attorney in the collection of the tax.
- (b) Records required from operators, etc.; form. Every operator renting guest rooms or travel trailer space in the city shall keep such records, receipts, invoices, and other pertinent papers, and in such form, as the city clerk may require, such that an accurate accounting can be made of any tax due under this article.
- (c) Examination of records. The city clerk or any person authorized in writing by the city clerk may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting guest rooms or travel

trailer space to persons 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.

- (d) Authority to require reports. In the administration of the provisions of this article, the city clerk may require the filing of reports by any person having in his possession or custody information relating to rentals of guest rooms or travel trailer space subject to the tax. The reports shall be filed with the city clerk when required by the city clerk and shall set forth the rental charged for each occupancy, the dates of occupancy, and such other information as the city clerk may require.

Sec. 1-13. Violations.

- (a) Any person violating any of the provisions of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished up to the maximum penalties allowed by the City Charter or Code and as determined by a court of competent jurisdiction. Each such person shall be guilty of a separate offense for each day during any portion of which any violation of any provision of this section is committed, continued, or permitted by such person, and shall be punished accordingly. Any operator or any other person who fails to register as required in this article, 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 city clerk or who renders a false or fraudulent return shall be deemed guilty of an offense.

- (b) Further, any operator who is delinquent in tendering the tax owed or who has failed to file a return shall not be granted a business license until said operator has paid any tax owed and properly filed a return.

Sec. 1-14. Collection of tax.

- (a) Action on tax. At any time within three years after any amount of tax required to be collected under this article 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 city attorney may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (b) Duty of successors or assignees of operator to withhold tax from purchase money. If any operator liable for any amount under this section sells a business or quits the business, said operator's successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former operator

produces a receipt from the city clerk showing that he or she has been paid or a certificate stating that no amount is due.

- (c) Liability for failure of purchaser to withhold. If the purchaser of a business fails to withhold the tax due from the purchase price as required, the purchaser shall be personally liable for the payment.
- (d) Overpayments. Whenever the amount of any tax or interest has been paid more than once or has been erroneously or illegally collected or received by the city under this section, it may be offset by the city clerk. If the operator or person determines that he has overpaid or paid more than once, which fact has not been determined by the city clerk, he shall have three years from date of payment to file claim in writing stating the specific ground upon which the claim is founded. The claim shall be audited. If the claim is approved by the city clerk, the excess amount paid the city may be credited on any amounts then due and payable from the person by whom it was paid, or his administrators or executors.

SECTION 2.
EFFECTIVE DATE

The effective date of this Ordinance shall be immediately upon its passage by the City Council and return of this Ordinance with the approval of the Mayor as provided for in Section 2.31 of the Charter or ten days after adoption, whichever is sooner.

SO ORDAINED, this 17th day of April, 2024.

CITY OF EAST ELLIJAY

Attest as to this Ordinance having passed by
majority vote:

Petina Pritchett
City Clerk

APPROVED:

This 17th day of April, 2024

Don Callihan

Mayor Don Callihan

VETOED:

This ____ day of _____, 2024

Mayor Don Callihan

Attest as to this Ordinance having become law due having not been approved or vetoed by noon on the 10th Calendar day after said Ordinance's adoption:

This _____ day of _____, 2024.

City Clerk

Attest as to this Ordinance having been vetoed and presented to the City Council for consideration and said vetoed was _____ or was not _____ overridden by three councilmember votes.

This _____ day of _____, 2024.

City Clerk