

THE CITY OF MOLENA, GEORGIA ORDINANCE NO. 54

AN ORDINANCE TO AMEND CODE OF ORDINANCES OF THE CITY OF MOLENA, GEORGIA; TO CREATE A NEW ARTICLE TO BE ENTITLED “HOTEL-MOTEL EXCISE TAX”; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF
THE CITY OF MOLENA, GEORGIA

SECTION 1. New Article Created. The Code of Ordinances of the City of Molena, Georgia, is hereby amended by creating a new Article to be entitled “Hotel-Motel Excise Tax” and sections thereunder to read as follows:

Sec. 1. Definitions.

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

City means the incorporated area of the City of Molena, Georgia, wherein the City is empowered to impose this tax by O.C.G.A. § 48-13-50 *et seq.*

City clerk means the duly appointed clerk of the City or the clerk's designee.

Due date means the 20th day after the close of the monthly period for which the tax is to be computed.

Estimated tax liability means the operator's prospective tax liability based upon tax remittance in the prior fiscal year as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.

Folio means primary documentation produced by a hotel 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 method of payment.

Guest room means a room occupied, or intended, arranged, or designed for transient or short-term occupancy not exceeding 30 consecutive days by one or more occupants for the purpose of living quarters or residential use.

Hotel means any facility or any portion of a facility, including any hotel, studio hotel, motel, motor hotel, auto or trailer court, truck stop, tourist cabin,

campground, lodge, inn, bed and breakfast, time-share or other condominium, apartment community, public club, or private club, containing guest accommodations and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any student dormitory, hospital, asylum, sanitarium, orphanage, jail, prison, or other facility in which human beings are housed and detained under legal restraint.

Monthly period means the calendar months of any year.

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

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

Operator means any person operating a hotel in the City, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person operating such hotel and who is subject to the taxation imposed for furnishing for value to the public any rooms, lodgings, or accommodations. An operator may also be referred to as an innkeeper.

Person means any individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number; excepting the United States, the State of Georgia and any instrumentality of either thereof upon which the City is without power to impose the tax.

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 operator to the occupant, without any deduction therefrom whatsoever.

Tax means the tax on occupants imposed by this article as provided by O.C.G.A. § 48-13-50 et seq.

Sec. 2. Imposition and rate.

There shall be paid for every occupancy of a guest room in a hotel in the City a tax of five percent (5%) of the amount of the rent unless otherwise exempted under this Article.

Sec. 3. Collection of tax by operator; Proceeds of the tax.

(a) Every operator in this City shall collect a tax of five percent (5%) on the amount of rent from the occupant unless an exemption is provided under Sec. 4. The operator shall provide a receipt to each occupant, which receipt shall reflect both the amount of rent and the amounts of this and other taxes applicable. This tax shall be due from the occupant and shall be collected by the operator at the same time that the rent is collected.

(b) The proceeds of this tax shall be used in accordance with O.C.G.A. § 48-13-51(a)(3).

Sec. 4. Exemptions.

No tax shall be collected from an occupant who has occupied any guest room for more than 30 continuous days; or from an occupant who certifies in writing that he is staying in such accommodations as a result of his residence having been destroyed by fire or other casualty; or from the United States, the State of Georgia, or any instrumentality of either thereof; or from any official or employee of the state, its units of local government or any other instrumentality of the state, when traveling on official business and presenting written substantiation thereof or paying by state or local government credit or debit card; or from a foreign sovereign enjoying exemption by treaty or consular convention, when presenting substantiation issued by the United States Department of State. Occupancy provided without charge is not subject to this tax.

Sec. 5. Registration of operator; form and contents; execution; certificate of authority.

Every person engaging or about to engage in business as an operator of a hotel in this City shall immediately register with the City clerk on a form provided by said official. Persons engaged in such business must so register not later than 30 days after the date that this article becomes effective. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the City clerk. 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 case of ownership by a

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. 6. Determination, returns and payments.

(a) *Due date of taxes.* All amounts of such tax shall be due and payable to the City clerk monthly on or before the 20th day of every month next succeeding each respective monthly period. The tax shall become delinquent for each monthly period after the 20th day of each succeeding month during which it remains unpaid.

(b) *Penalty and interest for failure to pay tax by due date.* An operator who fails to make any return or to pay the amount of tax as prescribed, shall be assessed a specific penalty to be added to the tax in the amount of five percent (5%) or \$5.00, whichever is greater, if the failure is for one month or less; and an additional five percent (5%) or \$5.00, whichever is greater, for each additional month or fraction thereof in which such failure shall continue; provided, however, that the aggregate penalty for any single violation shall not exceed 25 percent (25%) or \$25.00, whichever is greater. Delinquent amounts shall bear interest at the rate of one percent (1%) per month, or fraction thereof, until paid.

(c) *Acceptance of delinquent return and remittance without imposing penalty and interest; authority; requirements.* If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the City by affidavit attached to the return, and remittance is made within ten days of the due date, such may be accepted exclusive of penalty and interest.

(d) *Waiving of penalty and interest; authority.* O.C.G.A. § 48-2-41, relating to the authority to waive interest, and § 48-2-43, relating to the authority to waive penalty, shall apply; provided, however, that the governing authority shall stand in lieu of the Georgia Commissioner of Revenue, and the City shall stand in lieu of the state.

(e) *Penalty for fraud.* In the case of a false or fraudulent return, or of failure to file a return where willful intent exists to defraud the City of any tax due, a penalty of fifty percent (50%) shall be assessed.

(f) *Return; remittance; time of filing; operators required to file; contents.* On or before the 20th day of the month succeeding each monthly period, a return for the preceding monthly period together with appropriate remittance shall be filed with

the City clerk. The return shall report the gross rent, taxable rent, exempt rent, amount of tax collected or otherwise due for the period, and such other information as may be required by the City clerk. However, if the estimated tax liability for any monthly period shall exceed \$2,500.00 in any three consecutive months, such operator shall file an estimated return and remit not less than 50 percent (50%) of the estimated tax liability for the monthly period by the 20th day of that same monthly period. The amount of tax so remitted shall be credited against the amount to be due with the regular return for the monthly period to be filed on the 20th day of the succeeding month.

(g) *Extension of time of filing; authority; requirements; remittance; penalty and interest.* The governing authority of the City may, for good cause, extend the time for making returns for not longer than 30 days. No extension shall be valid unless granted in writing upon written application of the operator. No extension shall be granted more than once in any calendar quarter. An operator granted an extension shall remit tax equaling not less than 100 percent (100%) of the tax paid for the corresponding period of the prior fiscal year; such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty or interest shall be charged during the first ten days of the extension period.

(h) *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. The rate of the deduction shall be three percent (3%) of the amount due, but only if the amount due was not delinquent at the time of payment.

Sec. 7. Deficiency determinations.

(a) *Recomputation of tax; authority to make; basis of recomputation.* If the City Clerk is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the City by any operator, the City Clerk may compute and determine the amount required to be paid upon the basis of any information within the City's possession or that may come into the City's possession. One or more deficiency determinations may be made of the amount due for one or more monthly periods.

(b) *Penalty and interest for failure to pay tax.* Penalty and interest shall be assessed upon the amount of any determination, as provided by Section 6.

(c) *Notice of determination; service of.* The City clerk shall give to the operator written notice of the determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator at his address as it

appears in the records of the City. Service by mail is complete when delivered by certified mail with a receipt signed by addressee.

(d) *Time within which notice of deficiency determination to be mailed.* Except in cases of failure to make a return or of fraud, every notice of 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.

(e) *Appeal or protest of deficiency determination.* The procedure for contesting a deficiency determination shall be as provided by O.C.G.A. § 48-5-380.

Sec. 8. Determination if no return made.

(a) *Estimate of gross receipts.* If any operator fails to make a return, the City clerk shall make an estimate of the amount of the gross receipts of the operator, or as the case may be, of the amount of total rentals in this City which are subject to the tax. The estimate shall be made for the period or periods in respect to which the operator 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 in Section 7.

(b) *Penalty and interest for failure to pay tax.* Penalty and interest shall be assessed upon the amount of any determination, as provided by Section 6.

Sec. 9. Collection of tax by City .

(a) *Action for delinquent tax; time for.* At any time within three years after any tax or any 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 City may bring an action in a court of competent jurisdiction in the name of the City to collect the amount delinquent together with penalty, interest, court fees, filing fees, attorney's fee and other legal fees incident thereto.

(b) *Operator selling or quitting business.* If any operator liable for any amount under this article sells out his business or quits his business, he shall make a final return and remittance within 15 days after the date of selling or quitting the business.

(c) *Duty of successors or assignees of operator to withhold tax from purchase money.* If any operator liable for any amount under this article sells out his business or quits the business, his successors or assigns shall withhold sufficiently

from the purchase price to cover such amount until the former owner produces from the City clerk either a receipt reflecting full payment or a certificate stating that no amount is due.

(d) *Liability for failure to withhold.* If the purchaser of a business fails to withhold purchase as required, he shall be personally liable for the payment amount required to be withheld by him to the extent of the purchase price.

(e) *Credit for tax, 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 City, it may be offset by the governing authority. 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, such person shall have three years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. If the claim is approved by the City Council, the excess amount paid to the City may be credited on any amounts then due and payable from the person by whom it was paid.

Sec. 10. Administration of article; recordkeeping.

(a) *Authority of City Clerk.* The City Clerk or their designee shall administer and enforce the provisions of this article for the collection of the tax.

(b) *Records required from operators, etc.; form.* Every operator renting guest rooms in the City shall preserve, for a minimum of three years, all folios, receipts, certificates of exemption and such other documents as the City clerk may prescribe, and in such form as the clerk may require. Said records shall at all times be available for examination within the City .

(c) *Examination of records; audits.* The City Clerk, or any other person authorized in writing by the Mayor, may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting guest rooms 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; contents.* In administration of the provisions of this article, the City may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax. The reports shall be filed with the City clerk when required and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exemption, or such other information as the City may prescribe.

Sec. 11. Violations

(a) It shall be unlawful for any operator to willfully fail to make a return and pay the taxes due under this article by the due date provided. If the tax liability is \$10,000.00 or less, any person who violates this section shall be guilty of a misdemeanor. If the tax liability is more than \$10,000.00, any person who violates this section shall be guilty of a felony. (O.C.G.A. § 48-13-58.1).

(b) Any operator who fails, neglects, or refuses to collect the tax as provided this article shall be deemed guilty of a misdemeanor and, in addition to being liable for payment of the tax, upon conviction thereof, shall be punished by a fine of not more than \$100.00, or confinement in the jail for a term not to exceed three months, or both. (O.C.G.A. § 48-13-59).

(c) Any operator who fails or refuses to make any return as provided by this article, to keep adequate records, or to open them for inspection by the City, or to furnish other data reasonably requested by the City Clerk, shall be deemed guilty of a misdemeanor. (O.C.G.A. §§ 48-13-61, 48-13-62).

(d) Any operator who makes a false or fraudulent return with intent to evade the tax shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00, nor more than \$300.00, or confinement for a term not less than 30 days nor more than three months in the jail, or both. (O.C.G.A. § 48-13-60).

(e) It shall be unlawful for any operator to violate any other provision of this article for which punishment is not otherwise provided in this section. Each and every day during any portion of which any such violation under this article is committed, continued or permitted, shall constitute a separate offense. A person violating this subsection shall be guilty of a misdemeanor. (O.C.G.A. § 48-13-63).

SECTION 2. This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 3.

A. It is hereby declared to be the intention of the City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

B. It is hereby declared to be the intention of the City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other Section,

paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Ordinance.

C. In the event that any section, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance and that, to the greatest extent allowed by law, all remaining Sections, paragraphs, sentences, clauses, or phrases of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION 4. Repeal of Conflicting Provisions. Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. Effective Date. This ordinance shall become effective 14 September, 2021.

SO ORDAINED, this 13th day of September, 2021.

Joyce Corley, Mayor

ATTEST:

Tina Lee, City Clerk

(SEAL)

First Reading: 08/09/2021

Second Reading/

Adoption: 09/13/2021

City of Molena Hotel-Motel Tax Ordinance