



**ORDINANCE 2022-24**

**AN ORDINANCE TO ENACT CHAPTER 188 OF THE CODIFIED ORDINANCES TO IMPOSE A LODGING TAX WITHIN THE CITY OF POWELL, OHIO, IN SUPPORT OF ECONOMIC DEVELOPMENT AND TOURISM-RELATED PURPOSES.**

**WHEREAS**, Ohio Revised Code § 5739.08 authorizes a municipality to levy an excise tax on hotel and motel lodging transactions; and

**WHEREAS**, the Revised Code limits a municipal lodging tax to three percent if the county in which the municipality sits imposes its own lodging tax; and

**WHEREAS**, Delaware County levies a three percent tax on lodging to transient guests thereby limiting Powell's authority to tax to three percent; and

**WHEREAS**, the City desires to impose a three percent lodging tax on all lodging for transient guests within the City; and

**WHEREAS**, Council has determined it to be in the best interest of the health, safety, and welfare of the community to impose such a tax.

**NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:**

**Section 1:** That Chapter 188 of the Codified Ordinances be enacted to read as follows:

**188.01 DEFINITIONS.**

As used in this chapter:

- (a) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or in several structures.
- (b) "Transient accommodation" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests in which four or fewer rooms are used for the accommodation of such guests, whether such rooms are in one or in several structures.
- (c) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.
- (d) "Vendor" means the person who is the owner or operator of the hotel or transient accommodation and who furnishes the lodging.

**188.02 IMPOSITION OF TAX; PURPOSES.**

(a) For the purpose of providing revenue with which to meet the needs of the City for the use in a Bed Tax Special Revenue Fund of the City, for the advancement of the economic development and tourism-related purposes as described in 5739.09 (D)(2).

(b) On and after the effective date of this chapter, all revenues received by the City from the hotel-motel excise tax each year shall be divided for use in promoting and publicizing the City as a desirable location for conventions, trade shows and similar events; for use in purchasing cultural services for the enrichment of the community; for emergency human service needs; and for the use of the General Fund of the City without restriction.

(c) On and after the effective date of this chapter, the hotel-motel excise tax shall be three percent of the amount paid or to be paid by the transient guest for the lodging. The tax applies and is collectible at the time the lodging is furnished, regardless of the time when the price is paid. The tax does not apply to lodging furnished to the State, or to any of its political subdivisions, nor to any charitable organization for the lodging of transient indigent individuals, when such charitable organization pays the hotel or transient accommodation for such lodging.

(d) For the purpose of the proper administration of this chapter and to prevent evasion of the tax, it is presumed that all lodging furnished by hotels to transient guests is subject to the tax until the contrary is established.

#### **188.03 RESPONSIBILITY OF GUESTS AND VENDORS; EXEMPTIONS.**

The tax imposed by this chapter shall be paid by the transient guest to the vendor, and each vendor shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

If the transaction is claimed to be exempt, the transient guest must furnish to the vendor, and the vendor must obtain from the transient guest, a certificate specifying the reason that the sale is not legally subject to the tax. If no certificate is obtained, it shall be presumed that the tax applies.

#### **188.04 REFUND OF ILLEGAL OR ERRONEOUS PAYMENTS.**

The Finance Director shall refund to vendors the amount of taxes paid illegally or erroneously or paid on any illegal or erroneous assessment where the vendor has not reimbursed himself or herself from the transient guest. When such illegal or erroneous payment or assessment was not paid to a vendor but was paid by the transient guest directly to the Director or his or her agent, the Director shall refund it to the transient guest.

Applications shall be filed with the Director, on a form prescribed by the Director, within ninety days from the date it is ascertained that the assessment or payment was illegal or erroneous. However, such application for refund must, in any event, be filed with the Director within four years from the date of the illegal or erroneous payment of the tax. On the filing of such application, the Director shall determine the amount of refund due. The Director shall draw a warrant for such certified amount to the person claiming such refund. The Director shall make such payments from a tax refund fund as established by ordinance.

#### **188.05 REQUIRED RECORDS; INSPECTION AND DESTRUCTION OF RECORDS.**

Each vendor shall keep complete and accurate records of lodging furnished, together with a record of the tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices and such other pertinent documents. If the vendor furnishes lodging not subject

City Council

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to the tax, the vendor's records shall show the identity of the transient guest, if the sale was exempted by reason of such identity, or the nature of the transaction, if exempted for any other reason. Such records and other documents shall be open during business hours to the inspection of the Finance Director and shall be preserved for a period of four years, unless the Director, in writing, consents to their destruction within that period, or by order requires that they be kept longer.

**188.06 RETURNS REQUIRED; PENALTY FOR NONCOMPLIANCE.**

Each vendor shall, on or before the twentieth day of each month, make and file a return for the preceding month, on forms prescribed by the Finance Director, showing the receipts from furnishing lodging, the amount of tax due from the vendor to the City for the period covered by the return and such other information as the Director deems necessary for the proper administration of this chapter. The Director may extend the time for making and filing returns. Returns shall be filed by mailing the same to the Director, together with payment of the amount of tax shown to be due thereon.

The Director may authorize vendors whose tax liability is not such as to merit monthly returns, as determined by the Director upon the basis of administrative costs to the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

The Director shall stamp or otherwise mark on all returns the date they are received by him or her and shall also show thereon, by stamp or otherwise, the amount of payment received with the return. Any vendor who fails to file a return under this chapter shall, for each day he or she so fails, forfeit and pay into the City Treasury the sum of one dollar (\$1.00).

The Director may, if he or she deems it necessary in order to ensure the payment of the tax imposed by this chapter, require returns and payment to be made for other than monthly periods. The returns shall be signed by the vendor or his or her authorized agent.

**188.07 LIABILITY; ASSESSMENT AND PETITION FOR REASSESSMENT; PENALTIES.**

If any vendor collects the tax imposed by or pursuant to this chapter and fails to remit the same to the City as prescribed, he or she shall be personally liable for any amount collected which he or she failed to remit. The Director may make an assessment against such vendor based upon any information in the Director's possession.

If any vendor fails to collect the tax or any transient guest fails to pay the tax imposed by or pursuant to this chapter on any transaction subject to the tax, such vendor or transient guest shall be personally liable for the amount of tax applicable to the transaction. The Director may make an assessment against either the vendor or the transient guest, as the facts may require, based upon any information in his or her possession.

An assessment against a vendor in cases where the tax imposed by or pursuant to this chapter has not been collected or paid, shall not discharge the transient guest's liability to reimburse the vendor for the tax applicable to such transaction.

In each case, the Director shall give to the vendor or the transient guest, whoever is assessed, written notice of such assessment. Such notice may be served upon the vendor or transient guest personally or by registered or certified mail. An assessment issued against either, pursuant to this chapter, shall not be considered an election of remedies, nor a bar to an assessment against the other for the tax applicable to the same transaction, provided that no assessment shall be issued against any vendor or transient guest for the tax due on a particular transaction if such tax has actually been paid by another.

The Director may make an assessment against any vendor who fails to file a return required by this chapter or fails to remit the proper amount of tax in accordance with this chapter. When information in the possession of the Director indicates that the amount required to be collected is, or should be, greater than the amount remitted by the vendor, the Director may, upon the basis of test checks of a vendor's business for a representative period, which checks are hereby authorized, determine the ratio which the tax required to be collected under this chapter bears to the hotel's or transient accommodation's lodging, which determination shall be the basis of an assessment as herein provided in this chapter. Notice of such assessment shall be made in the manner prescribed in this chapter.

Unless the vendor or transient guest, to whom the notice of assessment is directed, files, within thirty days after service thereof, either personally or by registered or certified mail, a petition, in writing, verified under oath by such vendor, transient guest or his or her authorized agent, having knowledge of the facts, setting forth with particularity the items of such assessment objected to, together with the reasons for such objections, the assessment shall become conclusive and the amount thereof shall be due and payable, from the vendor or transient guest so assessed, to the Director. When a petition for reassessment is filed, the Director shall assign a time and place for the hearing of the same and shall notify the petitioner thereof by registered or certified mail, but the Director may continue the hearing, from time to time, if necessary.

A penalty of fifteen percent shall be added to the amount of every assessment made under this chapter. The Director may adopt and promulgate rules and regulations providing for the remission of penalties added to assessments made under this chapter.

When any vendor or transient guest files a petition for reassessment as provided in this chapter, the assessment made by the Director, together with penalties thereon, shall become due and payable within three days after notice of the finding made at the hearing has been served, either personally or by registered or certified mail, upon the party assessed.

**188.08 FOUR-YEAR LIMITATION FOR ASSESSMENTS; EXCEPTIONS.**

No assessment shall be made or issued against a vendor or transient guest for any tax imposed by or pursuant to this chapter more than four years after the return date for the period in which the lodging was furnished, or more than four years after the return for such period is filed, whichever is later. This section does not bar an assessment:

- (a) When the Finance Director has substantial evidence of the amount of taxes collected by a vendor from transient guests' lodging which was not returned to the City; or
- (b) When the vendor assessed failed to file a return as required.

City Council  
Daniel Swartwout, Mayor

Jon Bennehoof      Frank Bertone      Tom Counts      Christina Drummond      Heather Karr      Brian Lorenz

**188.09 PAYMENT BY TRANSIENT GUEST; FALSE EVIDENCE OF TAX-EXEMPT STATUS.**

No transient guest shall refuse to pay the full and exact tax as required by this chapter or present to the vendor false evidence indicating that the lodging, as furnished, is not subject to the tax.

**188.10 COLLECTION OF TAX BY VENDOR; REFUNDS OR REBATES PROHIBITED.**

No vendor shall fail to collect the full and exact tax as required by this chapter. No vendor shall refund, remit or rebate to a transient guest, either directly or indirectly, any of the tax levied pursuant to this chapter, or make in any form of advertising, verbal or otherwise, any statements which might imply that he or she is absorbing the tax, or paying the tax for the transient guest by an adjustment of prices, or furnishing lodging at the price including the tax or rebating the tax in any other manner.

**188.11 FILING OF REPORTS; FRAUDULENT REPORTS.**

(a) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false or fraudulent return, report or statement, or aid or abet another in the filing of any false or fraudulent return, report or statement.

(b) If any vendor required to file monthly returns under this chapter fails, for two consecutive months or for three or more months within a twelve-month period, to file such returns when due or to pay the tax thereon, or if any vendor authorized by the Director to file returns at less frequent intervals, fails on two or more occasions within a twenty-four month period, to file such returns when due or to pay the tax due thereon, the Director may require such vendor to furnish security in an amount equal to the average tax liability of the vendor for a period of one year, as determined by the Director from a review of returns or other information pertaining to such vendor, which amount shall in no event be less than one hundred dollars (\$100.00). The security may be in the form of an advance tax payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond, satisfactory to the Director and conditioned upon payment of the tax due with the returns from the vendor. The security must be filed within ten days following the vendor's receipt of the notice from the Director of its requirements.

A corporate surety bond filed under this section shall be returned to the vendor if, for a period of twelve consecutive months following the date the bond was filed, the vendor has filed all returns and remitted payment therewith within the time prescribed in this chapter.

**188.12 PERSONAL LIABILITY OF CORPORATE OFFICERS OR EMPLOYEES.**

If any vendor corporation required to file returns and to remit tax due to the City under this chapter fails, for any reason, to make such filing or payment, any of its officers or employees having control or supervision of or charged with the responsibility of filing returns and making payments, shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit the tax due. The sum due for such liability may be collected by assessment in the manner provided in this chapter.

**188.13 INTENT OF CHAPTER.**

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It is the intent of this chapter to levy an excise tax of three percent on transactions by which lodging in a hotel is or is to be furnished to transient guests, as referred to in Ohio R.C. 5739.08. Accordingly, this chapter shall be construed to effectuate those purposes and so as to be consistent with any requirement of law, compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.

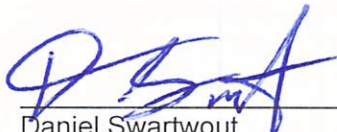
**188.99 PENALTY.**

Whoever violates any of the provisions of this chapter shall be fined not more than one hundred dollars (\$100.00) for a first offense. For each subsequent offense, such person shall, if a corporation, be fined not more than five hundred dollars (\$500.00), or, if an individual or a member of a partnership, firm or association, be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.

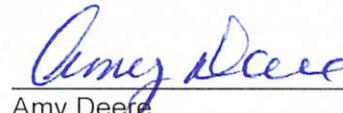
**Section 2:** It is hereby found and determined that all formal actions of this Council concerning and relating to passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

**Section 3:** That the provisions of this Ordinance are hereby declared to be severable, and if any is found to be void or unenforceable the remainder shall continue in full force and effect.

**Section 4:** This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

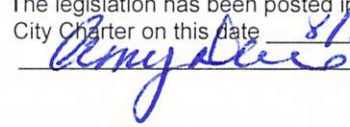
  
Daniel Swartwout  
Mayor

8-29-22  
Date

  
Amy Deere  
City Clerk

8/30/22  
Date

**EFFECTIVE DATE:** September 13, 2022

The legislation has been posted in accordance with the City Charter on this date 8/30/22  
 City Clerk