

July 8, 2022

13-0Offered by Fusco

Requested by: Office of the Mayor

ORDINANCE NO. 302-2022 creating a short-term rental registration tax; amending the City's tax code to unify all current taxes under one Chapter; and declaring an emergency.

WHEREAS, in 2015, the City of Akron passed a large-scale income tax reform ordinance; and

WHEREAS, the new income tax, codified as Chapter 104 of the City Code of Ordinances, took effect on January 1, 2016; and

WHEREAS, the prior income tax, codified as Chapter 99 of the City Code of Ordinances, remains in effect for taxes owed from income earned prior to January 1, 2016; and

WHEREAS, Chapter 99 contains other provisions that remain in effect; and

WHEREAS, The City is adding tax provisions as part of its new short-term rental registration program; and

WHEREAS, the City now seeks to modify its tax code to better reflect the current state of the law, and to clarify the applicability of certain code sections as it relates to certain tax years; and

WHEREAS, this legislation modifies Chapter 104 to have three Articles: Article 1. – Income Tax Ordinance, which contains the current income tax contained in Chapter 104; Article 2. – Short-term Rental Excise Tax, which is a new tax going into effect as part of the City's short-term rental registration program, and Article 3. – Hotel-Motel Tax, which is a re-numbering of the City's hotel-motel tax currently found in Chapter 99, Article 2.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron:

Section 1. That the title to Title 9 "General Provisions," Chapter 99 "Taxation" be and is hereby amended to read as follows:

Chapter 99 – INCOME TAX PRIOR TO 2016

Section 2. That the title to Title 9 "General Provisions," Chapter 104 of the Code of Ordinances of the City of Akron be and is hereby modified as follows:

Chapter 104 – ~~TAXATION~~ INCOME TAX ORDINANCE

Section 3. That Title 9 "General Provisions," Chapter 104 "Taxation," Article 1 of the Code of Ordinances of the City of Akron be and is hereby enacted and reads as follows:

Article 1. – Income Tax Ordinance

Section 4. That Title 9 "General Provisions," Chapter 104 "Taxation," Sections 104.01, 104.011, 104.012, 104.013, 104.02, 104.03, 104.04, 104.041, 104.042, 104.043, 104.044, 104.05, 104.06, 104.061, 104.062, 104.063, 104.064, 104.07, 104.08, 104.081, 104.082, 104.083, 104.084, 104.085, 104.086, 104.087, 104.088, 104.09, 104.091, 104.092, 104.093, 104.10, 104.11, 104.111, 104.112, 104.113, 104.114, 104.115, 104.116, 104.117, 104.12, 104.13, 104.14, 104.15, 104.16, 104.17, 104.18, 104.181, 104.182, 104.183, 104.19, 104.20, 104.21, 104.30, 104.31, 104.32, 104.33, 104.34, 104.35,

104.36, 104.37, 104.38, 104.39, 104.40, 104.41, 104.42, 104.43, 104.44, 104.45, and 104.46 of the Code of Ordinances of the City of Akron hereby fall under Title 9 “General Provisions,” Chapter 104 “Taxation,” Article 1 “Income Tax Ordinance” created under Section 4 hereof.

Section 5. That Title 9 “General Provisions,” Chapter 104 “Income Tax Ordinance,” Article 2 “Short-term Rental Excise Tax,” of the Code of Ordinances of the City of Akron be and is hereby enacted and reads as follows:

Article 2. – Short-term Rental Excise Tax

Section 104.50 – Definitions

- A. “Hosting Platform” means a person or entity that provides a means through which short-term rentals are offered, listed, advertised, solicited, or otherwise held out for rent.
- B. “Operator” means any person who offers a short-term rental or holds a short-term rental out to the public for rental by placing advertisements or solicitations with a hosting platform.
- C. “Person” shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- D. “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 any amount for which the occupant is liable for the occupancy without any deduction.
- E. “Short-term Rental” means any residential dwelling unit or part thereof offered or held out to the public for rent on a hosting website, web or mobile application, or other online platform through which short-term rentals are listed, advertised, solicited or otherwise held out for rent for a duration of occupancy of less than thirty consecutive days.
- F. “Transient Guest” shall mean a person or persons who enter into a contractual arrangement with the operator of a short-term rental whereby the person or persons pay rent to the operator, or to a person designated by the operator to receive rent, in exchange for occupancy of the short-term rental.
- G. “Tax Commissioner” shall mean the Commissioner of the Division of Taxation in the Department of Finance of the City or the person executing the duties of such Commissioner.

Section 104.51 – Rate of Tax

- A. An excise tax is hereby levied on the operation of short-term rentals subject to registration pursuant to Chapter 111 of the Code of Ordinances of the City of Akron. The tax shall equal three percent of the gross revenues generated from the operation of a short-term rental located in the City of Akron. Such tax constitutes a debt owed by the operator of the short-term rental to the City of Akron, which is extinguished only by payment of the tax to the City of Akron.

- B. Operators of short-term rentals shall pay, or shall cause any hosting platform on which their short-term rental is rented to pay on their behalf, the short-term rental excise tax established in this Chapter.
- C. In lieu of requiring compliance with subsection B of this Section, the treasurer of the City of Akron may enter into an agreement with a hosting platform to establish a process for the hosting platform to collect and pay the applicable taxes imposed upon operators, solely for transactions consummated between operators and transient guests through the hosting platform.
- D. This Chapter shall have prospective application such that revenues paid by a transient guest for the occupancy of a short-term rental pursuant to the terms of an agreement executed or in effect prior to the effective date of this Chapter shall not be considered in calculating an operator's tax liability.

Section 104.52 – Exemptions

- A. No tax shall be imposed under this Article on:
 - 1. Rents not within the taxing power of the City under the Constitution or laws of the state or the United States; or
 - 2. Rents paid by the City or any of its political subdivisions.
- B. No exemption claimed under subsection A of this Section shall be granted except on a claim made at the time the rent is collected and under penalty of perjury on a form prescribed by the Tax Commissioner. All claims of exemption shall be made in the manner prescribed by the Tax Commissioner.

Section 104.53 – Recordkeeping

The tax to be collected shall be accounted for as an excise tax on the gross revenues from operation of the short-term rental at the rate established in Section 104.51 of this Chapter. The operator of a short-term rental shall be responsible for keeping records showing the gross revenues received in connection with the operation of the short-term rental, so that the rate of tax can be properly accounted for, as detailed in Section 104.55 of this Chapter. Each operator, or alternatively, each hosting platform that an operator causes to collect and pay the excise tax on its behalf, shall hold in trust for account of the city a portion of the gross revenues received from the operation of a short-term rental as is sufficient to discharge the tax liability established under Section 104.51 of this Chapter until payment is made to the treasurer.

Section 104.54 – Registration

- A. Prior to commencing business, each operator of a short-term rental shall register with the City of Akron as required by Section 111.622 of this Code.
- B. Prior to commencing business, each hosting platform facilitating the renting of short-term rentals in the City of Akron shall register with the treasurer, providing any

information requested by the Tax Commissioner that is necessary to establish a system of payment of the tax established in this Chapter from the hosting platform to the City of Akron. This registration shall include an executed release allowing the Tax Commissioner to certify compliance.

Section 104.55 – Reporting and Remittance

- A. Each hosting platform shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Commissioner, make a return to the Tax Commissioner, on forms provided, of the gross revenues received and the amount of tax due for the operation of all of the short-term rentals in the City of Akron rented through the hosting platform for that calendar quarter or shorter reporting period, if applicable.
- B. If the Tax Commissioner of the City of Akron enters into an agreement with a hosting platform pursuant to Section 104.51 of this Chapter, such agreement may govern the process for reporting and remitting of tax due for the operation of short-term rentals rented through that hosting platform.
- C. At the time the return is filed, the full amount of the tax held in trust on behalf of the operators shall be remitted to the Tax Commissioner, if it has not previously been remitted.
- D. The Tax Commissioner may establish shorter reporting periods for an operator if determined necessary in order to ensure collection of the tax and may require further information in the return if such information is pertinent to the collection of the tax.
- E. Returns and payments are due no less than ninety days following cessation of a short-term rental's operation for any reason.
- F. All returns and payments submitted by a hosting platform shall be treated as confidential by the Tax Commissioner and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of Ohio, the County of Summit, or the City of Akron for official use only.

Section 104.56 – Failure to Collect and Report Tax

- A. If an operator fails to directly pay or cause a hosting platform to collect or withhold the tax prescribed by this Chapter or to make within the time provided any report and remittance of the tax or any portion of the tax, the Tax Commissioner shall proceed in such manner deemed best to obtain facts and information on which to base the estimate of the tax due. Upon procuring facts and information upon which to base the assessment of any tax imposed by this Chapter and payable by, or on behalf of, an operator, the operator who has failed or refused to collect the same or to make a report and remittance, the Tax Commissioner shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this Chapter. The Tax Commissioner shall give a notice of the amounts assessed by serving it personally on the operator or by depositing it in the United States mail, postage prepaid, and addressed to the operator at its last known place of address.

- B. An operator may within thirty (30) days after the serving or mailing of notice of amounts due make application in writing to the Tax Commissioner for a hearing on the amount assessed. If the operator does not apply for a hearing within the time prescribed, the amounts assessed by the Tax Commissioner shall become final and conclusive and immediately due and payable. If an application for a hearing is made, the Tax Commissioner shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why the amount assessed should not be fixed. At the hearing, the operator may appear and offer evidence why the amount assessed should not be so fixed. After the hearing, the Tax Commissioner shall determine the proper amount to be assessed and shall give written notice within ten (10) days of the decision to the operator in the manner prescribed herein. The amount assessed shall be payable after fifteen days unless an appeal is taken pursuant to Section 104.58 of this Chapter.

Section 104.57 – Penalties and Interest

- A. *Delinquency.* Any operator who fails to remit any tax imposed by this Chapter or cause a hosting platform to collect and remit such tax in the manner required and within the time required shall pay a penalty equal to ten percent of the amount of the tax, in addition to the tax.
- B. *Fraud.* If the treasurer determines that the non-payment of any remittance due under this ordinance is due to fraud, a penalty equal to twenty-five percent of the amount of the tax shall be added to the penalties stated in subsection (A) of this Section.
- C. *Interest.* In addition to the previous penalties imposed, any operator or hosting platform who fails to remit any tax imposed by this Chapter in the manner required shall pay interest at the rate of 0.5 percent per month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. *Penalties During Pendency of Hearing or Appeal.* No penalty provided under the terms of this Chapter shall be imposed during the pendency of any hearing provided for in Section 104.56 of this Chapter nor during the pendency of any appeal to the Board of Review provided for in Section 104.58 of this Chapter.
- E. *Abatement of Interest and Penalty.* In cases where a return has been filed in good faith and an assessment has been paid within the time prescribed by the Tax Commissioner, the Tax Commissioner may abate any charge of penalty or interest or both.

Section 104.58 – Appeals

Any operator or hosting platform aggrieved by any decision of the Tax Commissioner with respect to the amount of such tax, interest and penalties, if any, may appear to the Board of Review created by Section 104.16 of this chapter by filing a notice of appeal within thirty days of the serving or mailing of the determination of tax due. The Board shall fix a time and place for hearing the appeal, and shall give notice in writing to such operator or hosting platform at the last known place of business. The findings of the Board shall be final and conclusive

and shall be served on the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be due within 15 days and payable upon the service of notice.

Section 104.59 – Collection

Any tax required to be paid by a transient guest under the provisions of this Article shall be deemed a debt owed by the transient guest to the City. Any tax collected by an operator which has not been paid to the City shall be deemed a debt owned by the operator to the City. Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount.

Section 6. That Title 9 “General Provisions,” Chapter 99 “Income Tax prior to 2016,” Article 2 “Hotel-Motel Tax,” be and is hereby renumbered to Title 9 “General Provisions,” Chapter 104 “Taxation,” Article 3 “Hotel-Motel Tax.”

Section 7. That Title 9 “General Provisions,” Chapter 99 “Income Tax prior to 2016,” Article 2 “Hotel-Motel Tax,” Sections 99.30 through 99.40 and 99.99 be and are hereby renumbered and/or amended to read as follows:

~~99.30~~104.60 - Purpose.

To provide funds for the establishment of a convention bureau, the development of an exhibition hall in the Cascade Urban Renewal area, and the preparation of a long-term feasibility study relative to a convention center and exhibition hall and all matters related thereto, this hotel-motel tax is established.

~~99.30~~104.61 - Definitions

For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"Board of Review." The Board of Review created and established under § ~~99.46~~104.16.

"Hotel" and "motel." Every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

"Occupancy." The use or possession, or the right to the use or possession, of any room or rooms or space or portion thereof, in any hotel or motel for dwelling, lodging or sleeping purposes. The use or possession or the right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample, or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses, has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

"Operator." Any person who is the proprietor of the hotel or motel, whether in the capacity of owner, lessee, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than an employee, the managing agent shall be deemed an operator for the purposes of this article and shall have the same duties and liabilities as

his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Person." An individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other group or combination acting as a unit.

"Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or service of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

"Tax Commissioner." The Commissioner of the Division of Taxation in the Department of Finance of the City or the person executing the duties of such Commissioner.

"Transient guests." Persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

99.32104.62 – Imposition of Tax

- A. For the purpose of providing revenue with which to fund the activities listed in § ~~99.30~~**104.60**, an excise tax is levied on transactions by which lodging by a hotel or motel is or is to be furnished to transient guests.
- B. The tax is three percent on all rents paid or to be paid by transient guests for the lodging. Such tax constitutes a debt owed by the transient guest to the city, which debt is extinguished only by payment to the operator as trustee for the city, or to the city. The tax applies and is collectible at the time the lodging is furnished regardless of the time when the price is paid.
- C. For the purpose of the proper administration of this article and to prevent the evasion of the tax, it is presumed that all lodging furnished by hotels and motels in the City to transient guests is subject to the tax until the contrary is established.

99.33104.63 - Exemptions.

- A. No tax shall be imposed under this article on:
 - 1. Rents not within the taxing power of the City under the Constitution or laws of the state or the United States; or
 - 2. Rents paid by the City or any of its political subdivisions.
- B. No exemption claimed under subsection A of this section shall be granted except on a claim therefor made at the time the rent is collected and under penalty of perjury on a form prescribed by the Tax Commissioner. All claims of exemption shall be made in the manner prescribed by the Tax Commissioner.

99.34 104.64 - False evidence of tax-exempt status.

No transient guest shall refuse to pay the full tax as required by this article or present to the operator false evidence indicating that the lodging as furnished is not subject to the tax.

~~99.35~~ **104.65**- Payment by transient guest.

- A. The tax imposed by this article shall be paid by the transient guest to the operator, and each operator shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.
- B. If the transaction is claimed to be exempt, the transient guest must furnish to the operator, and the operator 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.

~~99.36~~ **104.66** - Statement and charge of tax.

- A. The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and on every evidence of occupancy or any bill or statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustee for and on account of the City and the operator shall be liable for the collection thereof and for the tax.
- B. No operator of a hotel or motel shall advertise or state in any manner, whether 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 rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

~~99.37~~**104.67** - Registration

Within thirty days after the effective date of Ordinance 803-1972, passed November 28, 1972 or within thirty days after commencing business, whichever is later, each operator of any hotel or motel renting lodging to transient guests shall register the hotel or motel with the Tax Commissioner and obtain from ~~him~~^{her} a Transient Occupancy Registration Certificate, which Certificate shall be at all times posted in a conspicuous place on the premises. The Certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel or motel;
- C. The date upon which Certificate was issued; and
- D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Hotel-Motel Tax Ordinance by registering with the Tax Commissioner of the City of Akron for the purpose of collecting from transient guests the Hotel-Motel Tax and remitting said tax to the Tax Commissioner of the City of Akron. This Certificate does not constitute a permit."

~~99.38~~ **104.68** - Records.

Each operator 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 article, and shall keep all invoices and other pertinent documents. If the operator furnishes lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was not exempted by

reason of such identity, or the nature of the transaction if exempted for any other reason. The records and other documents shall be opened during business hours to the inspection of the Tax Commissioner and shall be preserved for a period of three years, unless the Tax Commissioner, in writing, consents to their destruction within that period, or unless the Tax Commissioner orders that such records be kept for a longer period of time.

~~99.39~~**104.69** – Returns and payment.

Each operator shall, on or before the last day of the month following the close of each calendar quarter year, or at the close of any shorter reporting period which may be established by the Tax Commissioner, make a return to the Tax Commissioner, on forms provided by ~~him~~**her**, of the total rents charged and received and the amount of tax collected by transient occupancies. All claims for exemption from tax filed by occupants with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Commissioner. The Tax Commissioner may establish shorter reporting periods for any certificate holder if ~~heshe~~ deems it necessary in order to insure collection of the tax and ~~heshe~~ may require further information in the return if such information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this article shall be held in trust for the account of the City until payment is made to the Tax Commissioner. All returns and payments submitted by each operator shall be treated as confidential by the Tax Commissioner and shall not be released by ~~him~~**her** except on order of a court of competent jurisdiction, or to an officer or agent of the United States, the state, the county, or the City for official use only.

~~99.40~~**104.70**- Penalties and interest.

- A. Original Delinquency. Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty equal to ten percent of the amount of the tax, in addition to the tax.
- B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance became delinquent shall pay a second delinquency penalty equal to ten percent of the amount of the tax and previous penalty in addition to the tax and the ten percent penalty first imposed. An additional penalty equal to ten percent of the total tax and penalty of the previous thirty day period shall be added for each successive thirty day period that the occupant remains delinquent.
- C. Fraud. If the Tax Commissioner determines that the nonpayment of any remittance due under this article is due to fraud, a penalty equal to twenty-five percent of the amount of the tax shall be added thereto, in addition to the penalties stated in subsections A and B of this section.
- D. Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of .5% per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this article shall be imposed during the pendency of any hearing provided for herein, nor during the pendency of any appeal to the Board of Review provided for herein.

99.41-104.71 – Failure to Collect

If any operator fails or refuses to collect the tax and to make, within the time provided in this article, any report and remittance of such tax or any portion thereof required by this article, the Tax Commissioner shall proceed in such manner as ~~heshe~~ may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Commissioner procures such facts and information as ~~heshe~~ is able to obtain on which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect it and to make such report and remittance, ~~heshe~~ shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article. In case such determination is made, the Tax Commissioner shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of business. Such operator may, within ten days after the serving or mailing of such notice, make application in writing to the Tax Commissioner for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Tax Commissioner shall become final and conclusive and immediately due and payable. If such application is made, the Tax Commissioner shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, interest, and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After the hearing, the Tax Commissioner shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided by § ~~99.42~~**104.72**.

99.42 104.72- Appeals.

Any operator aggrieved by any decision of the Tax Commissioner with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Board of Review by filing a notice of appeal with it within ten days of the serving or mailing of the determination of tax due. The Board shall fix a time and place for hearing the appeal, and shall give notice in writing to such operator at his last known place of business. The findings of the Board shall be final and conclusive and shall be served on the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

99.43 104.73- Collection.

Any tax required to be paid by a transient guest under the provisions of this article shall be deemed a debt owed by the transient guest to the city. Any tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the city. Any person owing money to the City under the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such amount.

99.44 104.74- Disposition of funds collected.

By the passage of this article, it is the expressed intention of Council to place the funds derived from the imposition of the tax herein imposed in a fund entitled "Convention Bureau and Exhibition Hall," such funds to be used for feasibility studies, construction, operation, or any other costs incidental to such purposes.

Section 8. That Title 9 “General Provisions,” Chapter 104 “Taxation,” Section 104.95 “Retroactivity” be and is hereby enacted to read as follows:

104.95 – Retroactivity

- A. The creation of Article I of this Chapter, and the subsequent movement of Sections 104.01, 104.011, 104.012, 104.013, 104.02, 104.03, 104.04, 104.041, 104.042, 104.043, 104.044, 104.05, 104.06, 104.061, 104.062, 104.063, 104.064, 104.07, 104.08, 104.081, 104.082, 104.083, 104.084, 104.085, 104.086, 104.087, 104.088, 104.09, 104.091, 104.092, 104.093, 104.10, 104.11, 104.111, 104.112, 104.113, 104.114, 104.115, 104.116, 104.117, 104.12, 104.13, 104.14, 104.15, 104.16, 104.17, 104.18, 104.181, 104.182, 104.183, 104.19, 104.20, 104.21, 104.30, 104.31, 104.32, 104.33, 104.34, 104.35, 104.36, 104.37, 104.38, 104.39, 104.40, 104.41, 104.42, 104.43, 104.44, 104.45, and 104.46 of the Code of Ordinances of the City of Akron into Article I of this Chapter applies retroactively to January 1, 2016, insofar as the modification does not impair vested rights, impose new duties, or create new obligations.**
- B. The creation of Article III of this Chapter, and the subsequent movement and renumbering of prior Sections 99.30 through 99.44 into Article III applies retroactively, insofar as the modification does not impair vested rights, impose new duties, or create new obligations.**
- C. The renumbering of prior Sections 99.30 through 99.44 to Sections 104.60 through 104.74 shall take effect as of January 1, 2023. All hotel-motel taxes owed for activity prior to January 1, 2023, may be labeled as arising from either Sections 99.30 through 99.44 or Sections 104.60 through 104.74.**

Section 9. That Title 9 “General Provisions,” Chapter 104 “Taxation,” Section 104.99 “Violations; penalty” be and is hereby amended to read as follows:

104.99 - Violations; penalty.

- (A) Except as provided in subsection (B) of this section, whoever violates Section 104.15 of this chapter, subsection (A) of Section 104.98 of this chapter, or Section 104.091 of this chapter by failing to remit municipal income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.**
- (B) Any person who discloses information received from the Internal Revenue Service in violation of Internal Revenue Code Section 7213(a) or 7431 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.**
- (C) Each instance of access or disclosure in violation of subsection (A) of Section 104.98 of this chapter constitutes a separate offense.**
- (D) Whoever violates or fails to comply with any of the provisions of §§ 104.50 through 104.59 or §§ 104.60 through 104.75 for which no penalty is otherwise provided is guilty of a misdemeanor of the third degree. Penalty, see § 130.99.**

(DE) Whoever violates any provision of this chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the third degree on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree. By way of an illustrative enumeration, violations of this chapter shall include but not be limited to the following acts, conduct, and/or omissions:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter; or
- (2) Knowingly make any incomplete return; or
- (3) Willfully fail, neglect, or refuse to pay the tax, penalties, and interest, or any combination thereof, imposed by this chapter; or
- (4) Cause to not be remitted the City income tax withheld from qualifying wages of employees to the Municipality municipal corporation as required by Section 104.091; or
- (5) Neglect or refuse to withhold or remit municipal income tax from employees; or
- (6) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer; or
- (7) Fail to appear before the Tax Administrator and to produce his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator; or
- (8) Refuse to disclose to the Tax Administrator any information with respect to such person's income or net profits, or in the case of a person responsible for maintaining information relating to his or her employers' income or net profits, such person's employer's income or net profits; or
- (9) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator; or
- (10) To avoid imposition or collection of municipal income tax, willfully give to an employer or prospective employer false information as to his or her true name, correct social security number and residence address, or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof; or
- (11) Fail, as an employer, agent of an employer, or other payer, to maintain proper records of employees residence addresses, total qualifying wages paid and municipal tax withheld, or to knowingly give the Tax Administrator false information; or
- (12) Willfully fail, neglect, or refuse to make any payment of estimated municipal income tax for any taxable year or any part of any taxable year in accordance with this chapter; or
- (13) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(14) For purposes of this section, any violation that does not specify a culpable mental state or intent, shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation.

(15) For purposes of this section, the term "person" shall, in addition to the meaning prescribed in Section 104.02, include in the case of a corporation, association, pass-through entity or unincorporated business entity not having any resident owner or officer within the City, any employee or agent of such corporation, association, pass-through entity or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the municipal income tax returns and making the payments of the municipal income tax as required by this chapter.

Section 10. That Title 9 "General Provisions," Chapter 99 "Income Tax prior to 2016," Article 2 "Hotel-Motel Tax," Section 99.99 "Penalty" be and is hereby renumbered to Title 9 "General Provisions," Chapter 99 "Income Tax prior to 2016," Article 1 "Income Tax," Section 99.99 "Penalty," and is hereby modified to read:

99.99 – Penalty.

- A. 1. Whoever violates or fails to comply with any of the provisions of §§ 99.01 through 99.18 for which no penalty is otherwise provided is guilty of a misdemeanor of the third degree. **Penalty, see § 130.99.**
2. In addition to the penalty provided in subsection (A)(1) of this section, any employee of the City who violates § 99.12(D) relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal. Each disclosure of information in violation of § 99.12(D) shall constitute a separate offense.
- ~~B. Whoever violates or fails to comply with any of the provisions of §§ 99.30 through 99.44 for which no penalty is otherwise provided, is guilty of a misdemeanor of the third degree. Penalty, see § 130.99.~~

Section 11. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare for the reason that it is immediately necessary to ensure the City's tax code is up-to-date and easy to use, and provided this ordinance received the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and

be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed November 7, 2022

Dona R. Biviano
Clerk of Council

Ray Smalls
President of Council

Approved 11/8, 2022

[Signature]
MAYOR