

**VILLAGE OF YELLOW SPRINGS, OHIO
ORDINANCE 2021-06**

**REPEALING CHAPTER 882 “LODGING EXCISE TAX” OF THE CODIFIED
ORDINANCES OF YELLOW SPRINGS, OHIO AND ENACTING NEW CHAPTER 882
“LODGING EXCISE TAX AND REGISTRATION”**

Whereas, Codified Ordinance Section 882.02 (a) imposes a Lodging Excise Tax of three percent on all rents received by any lodging establishment for lodging furnished to transient guests while Codified Ordinance Section 1262.08(e)(7) addresses specific requirements for obtaining a Conditional Use Permit for Transient Guest Lodging;

Whereas, upon the request of Village Council, Staff reviewed the data from Village records since Chapter 882 was enacted in 2017 by Ordinance 2017-04 and presented those findings in reports to the Village Council as well as the Planning Commission;

Whereas, Village Council has determined that it would be in the best interest of the Village to distinguish between the Conditional Use Permit for Planning Commission purposes and an annual registration for tax purposes by revising Chapter 882 to reflect that distinction as well as revisions to improve lodging excise tax reporting and collections,

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO
HEREBY ORDAINS THAT:**

Section 1. Chapter 882 of the Codified Ordinances of the Village of Yellow Springs, Ohio is hereby repealed.

Section 2. A new Chapter 882 is enacted as set forth on the attached and incorporated Exhibit A with new language underlined and **bolded** and deleted language in ~~striketrough~~. Exhibit B, indicating related proposed language for Section 1262.08(E)(7), is attached for reference only as it is separate legislation subject to recommendations from the Planning Commission.

Section 3. This ordinance shall take effect and be in full force on the 30th day following passage.

Brian Housh, President of Council

Passed: 5-3-2021

Attest: _____
Judy Kintner, Clerk of Council

ROLL CALL

Housh__Y__

MacQueen__Y__

Stokes_Y__

Kreeger__Y__

Curliss__N__

CHAPTER 882

Lodging Excise Tax and Registration

882.01 DEFINITIONS.

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

(a) "Finance Director" means the Finance Director of the Village of Yellow Springs, Ohio.

(b) "Lodging Establishment" means 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 one or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. This includes but is not limited to hotels, motels, bed & breakfasts, cabins, condominiums, vacation homes, rooms in residences being rented to guests for sleeping accommodations, operator-occupied residences, accessory dwelling units, and non-operator occupied residences.

(c) "Occupancy" means the use or possession or the right to the use or possession of any room or rooms or space or portion thereof in any lodging establishment for dwelling, lodging, or sleeping purposes. The use or possession or 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, or has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

(d) "Operator" means the person who is the proprietor of the lodging establishment, whether in the capacity of owner, lessee, licensee, mortgagee in possession, or any other capacity. Where the operator performs their 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 chapter, and shall have the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(e) **"Operator Occupied" means the operator is a natural person who permanently occupies the same property as the lodging establishment more than 51 percent of each calendar year as the operator's primary residence, documented by at least two of the following: motor vehicle registration, driver's license or state identification, tax documents, copy of lease/deed or other title documents, or utility bills. An operator can have only one primary residence.**

~~(e)~~**(f)** "Person" means any natural person, individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, limited liability company, estate, trust, business trust, receiver, trustee, syndicate, or any other group or persons combination acting as a unit.

~~(f)~~**(g)** “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 any amount for which the occupant is liable for the occupancy without any deduction there from whatsoever.

(h) “Room” means any room or portion thereof offered for a fee that contains, at a minimum, provisions for sleeping accommodations.

~~(h)~~**(i)** “Transient Guests” mean persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

~~(h)~~**(j)** “Zoning Administrator” means the Zoning Administrator of the Village of Yellow Springs, Ohio.

882.02 IMPOSITION OF TAX.

(a) For the purpose of providing revenue with which to meet the needs of the Village, for the use of the general fund of the Village, there is levied a tax of three percent on all rents received by a lodging establishment for lodging furnished to transient guests.

(b) The tax constitutes a debt owed by the transient guest to the Village, which is extinguished only by payment to the operator as trustee for the Village or by payment to the Village. The transient guest shall pay the tax to the operator of the lodging establishment at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due from each transient guest at the time such guest ceases to occupy space in the lodging establishment. If, for any reason, the tax due is not paid to the operator of the lodging establishment, the Finance Director may require that such tax shall be paid directly to the Finance Director.

882.03 EXEMPTIONS.

(a) No tax shall be imposed under this chapter upon:

(1) Rents not within the taxing power of the Village under the Constitution or laws of Ohio or the United States; or

(2) Rents paid by the State or any of its political subdivisions.

(3) Rents received by individuals renting a room or rooms for fewer than five nights per calendar year.

(b) No exemptions claimed under this Section shall be granted except upon a claim made at the time rent is collected and under penalty of perjury upon a form prescribed by the Finance Director. All claims of exemption shall be made in the manner prescribed by the Finance Director.

882.04 PROHIBITION AGAINST FALSE EVIDENCE OF TAX- EXEMPT STATUS.

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

(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 the tax applies.

882.05 TAX TO BE SEPARATELY STATED AND CHARGED.

(a) When possible, 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 upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the Village, and the operator shall be liable to the Village for the collection thereof and for the tax.

(b) No operator of a lodging establishment 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.

882.06 REGISTRATION AND CERTIFICATE FEES.

~~Within thirty days after the effective date of this chapter or within thirty days after commencing business, whichever is later,~~ (a) **Upon registering with the Zoning Administrator as required by Section 1262.08(e)(7)(A),** each operator of any lodging establishment renting lodging to transient guests shall **also** register said establishment with the ~~Zoning Administrator and~~ **Finance Director to** obtain a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall ~~among other things~~ state the following:

~~(a)(1)~~ (1) The name of the operator;

~~(b)(2)~~ (2) The address of the lodging establishment;

~~(c)(3)~~ (3) The date upon which the certificate was issued **and the date of expiration;**

~~(d)(4)~~ (4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Village of Yellow Springs Lodging Excise Tax Ordinance ~~by registering with the Zoning Administrator~~ for the purpose of collecting from transient guests the Lodging Excise Tax and remitting said tax to the Finance Director. This certificate does not constitute a permit."

(b) Certificate fees. For each certificate issued, the Finance Director shall collect payment upon the initial registration and then annually thereafter according to the classification of the operator:

<u>(1) Hotel/motel:</u>	<u>\$100.00</u>
<u>(2) Bed and breakfast/inn:</u>	<u>\$100.00</u>
<u>(3) Operator occupied:</u>	<u>\$100.00</u>

(4) Non-operator occupied: \$500.00

(c) Each operator of an establishment which is non-operator occupied, or is not a hotel/motel or bed and breakfast/inn as defined in the Zoning Code shall pay a single Affordable Housing Mitigation Fee of \$1,500.00 annually to mitigate detrimental effects of removing traditional rental or home ownership options, due concurrent with certificate fees upon initial registration and thereafter with tax filing annually.

(d) Each operator who files for registration as an “operator occupied” establishment shall provide at least two forms of proof of residency annually.

(e) For establishments which are non-operator occupied and do not fit the Code or statutory definitions of hotel/motel or bed and breakfast/inn, the principal of the operator (if the operator is a business entity such as a corporation, limited liability company or partnership) or the natural person responsible for the registration shall, at the operator’s expense, provide an updated FBI/BCI background check, to be kept confidential with the initial registration, and updated at least every three years. Any convictions for financial crimes, nuisances, soliciting prostitution, human trafficking, permitting underage consumption or similar offenses shall be grounds for the Finance Director to revoke the annual registration or deny renewal.

(f) Each operator shall provide, with each registration, a general description of any hosting platform or booking service the operator uses or intends to use for reservations or payment, or to facilitate such transactions, including but not limited to AirBNB, VRBO or other entities which may collect, directly or indirectly through an agent or intermediary, a fee in connection with such reservations and payment services. Each operator shall provide a written release to the Finance Director at each registration for use in auditing such records and advise the Finance Director if the operator uses a fiscal year different from the calendar year for accounting.

(g) Each certificate issued or renewed under this section expires on the date of the reporting and remitting deadline set forth in Section 882.07 (April 15 annually unless extended by the Finance Director).

882.07 REPORTING AND REMITTING.

(a) On or before ~~January 31 and July 31~~ April 15 and October 15 of each year, each operator shall make and file a return for the preceding six months on forms prescribed by the Finance Director. The first return shall be filed by July 31, 2018. Such returns shall show the receipts from furnishing lodging, the amount of tax due from the operator to the Village for the period covered by the return, and such other information as the Finance Director deems necessary for the proper administration of this chapter. The Finance Director may extend the time for making and filing returns. Returns shall be filed by delivering or mailing the same to the Finance Director together with payment of the full amount of tax shown to be due thereon. To meet this requirement, the tax return and payment must be mailed with a dated postmark. The postmark must be dated on or before the day the return is due. For all other delivery forms, the tax return and payment must be received on or before the last business day before the day the return is due.

(b) The Finance Director may authorize operators whose tax liability is not such as to merit twice yearly returns, as determined by the Finance Director upon the basis of administrative costs of the Village, to make and file returns at ~~less frequent~~ **other** intervals. Such authorization shall be in writing, shall indicate the intervals at which returns are to be filed, and may be revoked by the Finance Director upon thirty days written notice.

(c) All claims for exemptions from tax filed by transient guests with the operator during the reporting period shall be filed with the return.

(d) All returns and payments submitted by each operator shall be treated as confidential by the Finance Director 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, Greene County, or the Village of Yellow Springs for official use only. **However, records pertaining to failure to file and failure to pay become subject to disclosure under Ohio Revised Code 149.43, as citations for violations are public records.**

(e) If, for any reason, the lodging establishment shall cease doing business in the Village, all returns and payments are due immediately upon cessation of business.

(f) All taxes collected by operators pursuant to this section shall be held in trust for the account of the Village until payment thereof is made to the Finance Director.

(g) The Finance Director, if he or she deems it necessary in order to ensure the payment of the tax imposed by this section, may require returns and payments to be made for other than twice yearly periods. The returns shall be signed by the operator or their authorized agent.

882.08 CIVIL PENALTIES, AND INTEREST DELINQUENCY AND LATE FEES.

(a) Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a ~~penalty~~ **late fee** equal to ten percent of the amount of the tax in addition to the tax, **or ten dollars (\$10.00), whichever is greater.** **The Finance Director may publish the names of delinquent filers.**

(b) Continued Delinquency. Any operator who fails to remit any delinquent remittances on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency **late fee** ~~penalty~~ equal to ten percent of the amount of the tax and previous ~~penalty~~ **late fee** in addition to the tax and the ten percent ~~penalty~~ **late fee** first imposed. An additional ~~penalty~~ **late fee** equal to ten percent of the total tax and ~~penalty~~ **late fee** of the previous thirty-day period shall be added for each successive thirty-day period the account remains delinquent. **After six months of continued delinquency, the Finance Director may initiate prosecution for non-filing or other applicable offenses under Section 882.99 and the operator shall be subject to all civil penalties and late fees imposed under this Section as well as fines or criminal penalties imposed by a court upon conviction.**

(c) Fraud. If the Finance Director determines that the non-payment of any remittance due under this chapter is due to fraud, a **civil** penalty equal to twenty-five percent of the amount of the tax shall be added thereto in addition to the ~~penalties~~ **fees** 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 chapter shall pay interest at the rate of one and one-half percent or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.~~ **Notice. Before imposing delinquency late fees, the Finance Director shall email then send annual reminders to all operators at the establishment's address by first class regular mail or postcards at least 30 days prior to the due date. Unless the deadline for filing has been extended, the Finance Director will use certified or priority U.S. mail with receipt tracking to the establishment's address to notify delinquent filers of their status and set a deadline for response, and assess mailing expenses.**

(e) Penalties During Pendency of Hearing or Appeal. No penalty **or late fee** provided under the terms of this chapter shall be imposed during the pendency of any hearing provided for in Section 882.11 of this chapter nor during the pendency of any appeal to the Board of Tax Review established in Section 881.21 of the Codified Ordinances provided for in Section 882.12 of this chapter.

882.09 RECORDS, INSPECTION, DESTRUCTION, AUDITING PROCEDURES.

(a) Each operator shall keep complete and accurate records of lodging furnished and 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 operator furnished 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 shall show the nature of the transaction, if exempted for any other reason. Such records and other documents shall be open during business hours for inspection by the Finance Director, or his or her agents, and shall be preserved for a period of four years, unless the Finance Director, in writing, consents to their destruction within that period, or unless the four-year period is extended by any orders requesting that such records be kept for a longer period of time.

(b) The Finance Director or his or her agent shall have the right at all reasonable times during business hours to make such examinations and inspections of books and records of the lodging establishment as may be necessary to determine the correctness of the required reports and the taxes paid. The right of the Finance Director or his or her agent to inspect, audit and make copies of books and records of the lodging establishment shall include, but not be limited to, the following: books of accounts, daily cash receipt records, and lodging establishment registration forms.

(c) The Finance Director shall further have the right to order a special purpose audit of the lodging establishment's books and records upon determining there exists the lesser of a three percent or one hundred dollars (\$100.00) underpayment of the lodging excise tax. The cost of the special purpose audit shall be assessed and paid for by the operator. Any deficiency in payment shall be deemed a nonpayment and shall be immediately paid by the operator and shall further be subject to penalties as provided in Section 882.08.

882.10 UNLAWFUL TO PROHIBIT INSPECTION.

It shall be unlawful for any operator to prohibit or hinder the Finance Director or his or her agent from making any examination or audit as authorized by Section 882.09 hereof.

882.11 FAILURE TO COLLECT AND REPORT TAX, DETERMINATION OF TAX BY FINANCE DIRECTOR.

(a) If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the Finance Director shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due, including publication of the identities of operators which have failed to file.

(b) As soon as the Finance Director procures such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Finance Director 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 their last known place of business.

(c) Such operator may within ten days after the serving or mailing of such notice make application in writing to the Finance Director 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 Finance Director shall become final and conclusive and immediately due and payable.

(d) If such application is made, the Finance Director 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 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 fixed.

(e) After such hearing, the Finance Director 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 in Section 882.12 of this chapter.

882.12 APPEAL.

Any operator aggrieved by any decision of the Finance Director with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Board of Tax Review by filing a notice of appeal with the Finance Director and the Clerk of Council within fifteen days of the serving or mailing of the determination of tax due. The Board of Tax Review shall fix a time and place for hearing such appeal, and shall give notice in writing to such operator at their last known place of business. The findings of the Board of Tax Review shall be final and conclusive and shall be served upon 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.

882.13 ACTIONS TO COLLECT.

Any tax required to be paid by a transient guest under the provisions of this chapter shall be deemed a debt owed by the transient guest to the Village. Any such tax collected by an operator, which has not been paid to the Village, shall be deemed a debt owed by the operator to the Village. Any person owing such a debt to the Village under the provisions of this chapter which debt has become delinquent, shall be liable to an action brought in the name of the Village of Yellow Springs for the recovery of such amount **and all attorney fees, court costs and related expenses. The Finance Director may initiate prosecutions of delinquent filings or non-filings by filing the requisite affidavit for citation with the Yellow Springs Police Department.**

882.14 REFUNDS.

(a) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Village under this section, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Finance Director within three years of the date of payment. The claim shall be on forms furnished by the Finance Director.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Finance Director that the person from whom the tax has been collected was not a transient guest; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient guest or credited to rent subsequently payable by the transient guest to the operator.

(c) A transient guest may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the Village by filing of a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the transient guest directly to the Finance Director, or when the transient guest having paid the tax to the operator, establishes to the satisfaction of the Finance Director that the transient guest has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

882.15 MONEY RECEIVED, WHERE CREDITED.

The money **lodging excise taxes** received under the provisions of this chapter shall be credited to the general fund of the Village. **Affordable Housing Mitigation Fees shall be credited to the Affordable Housing Fund established by Ordinance 2018-51 and Ordinance 2021-07.**

882.16 ADDITIONAL RULES AND REGULATIONS.

The Finance Director is authorized to issue and promulgate additional written rules and regulations to assist in the administration and enforcement of this chapter and operators

must comply with the same provided that they have received written copies thereof at least thirty days prior to the effective date of such rules and regulations.

882.17 SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof.

882.18 DISCRIMINATION PROHIBITED.

An operator shall not decline a transient guest reservation or rental based on race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status, or impose different terms or conditions on a transient guest, or post any listing on a hosting platform discouraging or indicating a preference for or against any transient guest on account of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status.

882.99 PENALTY.

(a) Any operator who fails to file any return or report required under this chapter, **if convicted**, shall be subject to the maximum fine of ~~one thousand dollars (\$1,000.00)~~ **five hundred dollars (\$500.00)** per occurrence, **an unclassified misdemeanor, and all costs of prosecution**. A separate offense shall be deemed to occur on the first day of each month the failure to file continues. **The Finance Director will use certified or priority U.S. mail with receipt tracking to the establishment's address to notify non-filers of their status and set a deadline for response, and assess mailing expenses.**

~~(b)~~(b) **Any operator who engages in prohibited discrimination, if convicted, shall be subject to a maximum fine of one thousand dollars (\$1,000.00) per occurrence, an unclassified misdemeanor, and all costs of prosecution.**

(c) Any person violating or failing to comply with any other provision of this chapter is guilty **subject to prosecution and conviction** of a minor misdemeanor and shall be fined not more than the maximum amount allowed by law.

(d) Upon a conviction for failure to file under Section (a) or discrimination under Section (b), the Finance Director shall revoke the annual registration, notify the operator of the revocation and demand surrender of the Certificate by certified or priority mail, then notify the Zoning Administrator for Planning Commission consideration of revocation.

(e) Upon conviction under Section (b), or failure to pay Village income taxes or utilities, the Finance Director may advise the Zoning Administrator that the operator is no longer in good standing for Planning Commission consideration.

(Ord. 82-1. Passed 1-18-82; Ord. 2016-32. Passed 11-21-16.; Ord. 21-06 Passed _____)