



Town of Grafton Ordinance No. 2022-01

AN ORDINANCE AMENDING TITLE 7, LICENSING AND REGULATIONS, AND CREATING CHAPTER 19, FOR THE COLLECTION OF ROOM TAX ON OVERNIGHT LODGING, OF THE CODE OF ORDINANCES, TOWN OF GRAFTON, WISCONSIN

WHEREAS, Wis. STAT. § 66.0615 provides that a municipality may adopt an ordinance imposing a tax on the privilege of furnishing at retail, rooms or lodging to transients by hotelkeepers, motel operators and other person furnishing accommodations that are available to the public; and

WHEREAS, if a tax is imposed under this statute the municipality must spend at least 70% of the room tax collected on the promotion and development of tourism as defined in Section 66.0615(e), and that the remaining amount may be devoted to the municipality general funds; and

WHEREAS, the Town of Grafton has determined that a room tax would benefit the Town of Grafton in its efforts to attract overnight travelers engaged in business, educational or recreational activities; and

WHEREAS, a Notice of Public Hearing before the Town Board was duly published in the *Ozaukee Press* on _____, 2022, and _____, 2022; and

WHEREAS, a Public Hearing was held before the Town Board on _____, 2022, regarding the proposed Amendments to the Town's Code of Ordinances; and

WHEREAS, based on the above, it is deemed to be in the best interest of the Town of Grafton that the Municipal Code of the Town of Grafton be further modified and amended in the manner hereinafter more particularly set forth below.

NOW, THEREFORE, the Town Board of the Town of Grafton does hereby ordain as follows:

Section 1:

The Town of Grafton Code of Ordinances is hereby amended as provided below by adding the underlined language:

7.19.1 Imposition Of Room Tax.

7.19.1.01 Generally.

Pursuant to Wis. Stat. § 66.0615, a tax is imposed on the privilege and service of selling or furnishing, at retail, except sales for resale, rooms or lodging to transients by hotel keepers, motel operators, marketplace providers, owners of short-term rentals, and other persons or retailers selling or furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the rate 8% of the gross receipts from such retail furnishing of rooms or lodgings.

7.19.1.02 Permit Required; Fee.

Every hotel keeper, motel operator or other persons furnishing accommodations as described under Section 7.19.1.01 shall file with the Clerk an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the Clerk and shall set forth the name under which the applicant intends to transact business, the location of the business and such information as the Clerk requires. The application shall be signed by the owner if a sole proprietor and, if not a sole proprietor, by the person authorized to act on behalf of such sellers. At the time of making an application, and annually thereafter, the applicant shall pay a fee of \$100. The permit shall be renewed each year by December 31.

7.19.1.03 Permit Issuance.

After compliance with Section 7.19.1.02, the Clerk shall grant and issue to each applicant a separate permit for each place of business within the Town. Such permit is not assignable and is valid for only the person in whose name it is issued and for the transaction of business at the place designated therein. It shall, at all times, be conspicuously displayed at the place for which issued.

7.19.1.04 Revocation and Suspension.

When any person fails to comply with the provisions of this chapter, the Clerk may, upon 10 days' notification and after affording such person the opportunity to show cause why the permit shall not be revoked, revoke or suspend any or all permits held by such person. The Clerk shall give to each person written notice of the suspension or revocation of any permits. The Clerk shall not issue a new permit after revocation of a permit until all Sections of this chapter have been complied with. An additional fee of \$50 shall be imposed for the renewal or issuance of a permit which has been previously suspended or revoked.

7.19.1.05 Collection of Tax.

The room tax imposed by Section 7.19.1.01 for each calendar quarter is due and payable and must be received by the Town Clerk on or before the last business day of the following month succeeding the calendar quarter for which it is imposed.

- (A) Quarterly Room Tax Returns. A return shall be filed with the Town Clerk on or before the same date on which such tax is due and payable. Such return shall be on a form provided by the Town and shall show the gross receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period, and such other information as the Town Clerk deems necessary, provided it is directly related to the tax.
- (B) A marketplace provider shall collect the tax imposed under Section 7.19.1.01 for a marketplace seller, unless the marketplace provider has been issued a waiver under Wis. Stat. § 77.52 (3m) (b) or (c), and forward it to the Town Clerk, on a quarterly basis, along with a form prepared by the Wisconsin Department of Revenue for such purpose, except that a marketplace provider shall forward the tax to the Clerk more frequently if the marketplace provider and the Clerk enter into a written agreement providing for more frequent submissions. The marketplace provider shall notify the marketplace seller that the marketplace provider has collected and forwarded the taxes described in this paragraph. The Clerk shall not impose and collect a room tax from the marketplace seller if the Clerk collects the room tax directly from the marketplace seller.

7.19.1.06 Liability for Unpaid Tax.

The room tax imposed hereunder shall be a continuing liability upon the business entity or person upon whom it is imposed until paid in full. Business successors shall be liable for all quarters for which a return has not been filed and payment not received.

7.19.1.07 Interest on Unpaid Tax.

All unpaid taxes under this chapter shall bear interest at the rate of twelve percent per annum from the due date of the return until the first day of the month following the month in which the tax was paid.

7.19.1.08 Delinquent Tax Returns.

Tax returns required hereunder and not timely filed shall be deemed delinquent and shall be subject to a ten-dollar late filing fee.

7.19.1.09 Administration of Tax Collection.

The Town Clerk shall be responsible for the administration and collection of the room tax. The Town Clerk may, by field audit, determine the tax required to be paid to the Town or the refund due to any person under this section. The determination shall be made upon the basis of the facts contained in the return being audited and upon any other information available to the Clerk. The Clerk is authorized to examine and inspect the books, records memoranda and property of any person which are directly related to the tax or which have a direct bearing upon

the gross receipts upon which the tax due is determined in order to verify the tax liability of that person or of another person. Nothing herein shall prevent the Clerk from making a determination of tax at any time. The Clerk shall cause to be submitted to the Wisconsin Department of Revenue on or before May 1 of each year a report containing the information required under Wis. Stat. § 66.0615(4)(a).

7.19.1.10 Allocation of Room Tax.

The Clerk shall allocate at least seventy percent (70%) of the amount collected under Section 7.19.1.05 to the Tourism Commission described under Section 7.19.1.10. The remaining amounts collected may be retained by the Town in its general fund.

7.19.1.11 Penalty Assessment.

- (A) If the Clerk probable cause to believe that the correct amount of room tax has not been assessed or that a submitted tax return is not correct, the Clerk may inspect and audit the records of any person subject to Section 7.19.1.01 pertaining to the furnishing or selling of accommodations to determine the correct amount of room tax due. A determination under this paragraph shall be provided in writing within 4 years after the due date of the return, unless no return has been filed.
- (B) The Clerk may impose a forfeiture not to exceed five percent (5%) of the tax due under Section 7.1.19.1.01 on any person subject to Section 7.1.19.1.01 who fails to comply with a request to inspect and audit the person's records.
- (C) If any person fails to timely file a return, as required by this chapter, the Clerk shall make an estimate of the amount of the gross receipts upon which the tax is determined. Such estimate shall be made for the period for which such person failed to make a return and shall be based upon any information which is in the Clerk's possession or may come into his or her possession or such other information as may have a bearing upon the determination of gross receipts. On the basis of this estimate the Clerk shall compute and determine the amount required to be paid to the Town, adding to the sum thus arrived at a penalty equal to one percent per month. Such determination may be made for each quarterly period for which no return is filed. Such penalty shall be due upon written notice to the business entity or person owing the tax and shall not be in lieu of the tax due hereunder. No refund or modification of the payment determined may be granted until the person files a correct room tax return and permits the Clerk to inspect and audit his or her financial records.
- (D) The Clerk may impose a forfeiture not to exceed twenty-five percent (25%) of the tax due under Section 7.1.19.1.01 or five thousand dollars (\$5,000), whichever is less, on any person subject to Section 7.1.19.1.01 that fails to pay the tax due under Section 7.1.19.1.01. This paragraph also applies to a marketplace provider that is required to collect and remit taxes, but that fails to file a return as required or pay the required tax.

7.19.1.12 Fraudulent Tax Returns.

If a person files false or fraudulent returns with the intent in either case to defect or evade the tax imposed by this chapter, a penalty of fifty percent shall be added to the tax required to be paid, exclusive of interest and other penalties.

7.19.1.13 Records to be Maintained.

Every person liable for the tax imposed by this chapter shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form so as to enable the Clerk to determine the tax due hereunder.

7.19.1.14 Confidentiality.

- (A) All tax returns, schedules, exhibits, writings or audit reports relating to such returns on file with the Clerk are deemed to be confidential, except the Clerk may divulge their contents to the following and no others:
 - (1) The person who filed the return.
 - (2) The Wisconsin Department of Revenue.
 - (3) Such other public officials when deemed necessary and after notification of the licensee.
 - (4) The Town Chairman.
 - (5) Any other person to the extent required by law or court order.
- (B) No person having an administrative duty under this section shall make known in any manner the business affairs, operations or information obtained by an investigation of records of any person on whom a tax is imposed by this section, the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or permit, any return or copy thereof to be seen or examined by any person, except as provided herein.

7.19.1.15 Definitions.

For the purpose of this chapter, the following terms shall have the meaning given herein:

- (A) “Gross receipts” means the sales price as defined in Section 77.51(15b).
- (B) “Hotel” or “motel” means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, summer camps, bed and breakfast, apartment hotels, resort lodges, campgrounds, cabins and any other building or group of buildings in which the accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospital, sanatoriums, or nursing homes, rooming houses, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes, provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual.
- (C) “Marketplace provider” means any person who facilitates a retail sale by a seller by listing or advertising for sale or furnishing by the seller, in any manner, rooms, lodging, or other accommodations to transient, and, who directly or indirectly, through agreements or arrangements with 3rd parties,

processes the payment from the purchaser for the retail sale, regardless of whether the person receives compensation or other consideration in exchange for the services provided by the person.

- (D) “Marketplace seller” means a seller who sells products through a physical or electronic marketplace operated by a marketplace provider.
- (E) “Person” shall include corporations, partnerships or other business entities.
- (F) “Short-term rental” means a residential dwelling that is offered for rent for a fee and for fewer than 30 consecutive days.
- (G) “Tourism” means travel for recreational, business or educational purposes.
- (H) “Tourism entity” means a nonprofit organization that spends at least 51 percent of its revenues on tourism promotion and tourism development, and provides destination marketing staff and services for the tourism industry in the Town.
- (I) “Tourism promotion and tourism development” means any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at more than one establishment on which a tax under this chapter may be imposed, that are owned by different persons and located within a municipality in which a tax under this section is in effect;
 - a. Marketing projects, including advertising media buys, creation and distribution of printed or electronic promotional tourist materials, or efforts to recruit conventions, sporting events, or motorcoach groups.
 - b. Transient tourist informational services.
 - c. Tangible municipal development, including a convention center.
- (J) “Transient” means any individual residing for a continuous period of less than thirty (30) days in a motel, hotel, or other furnished accommodations available to the public.

7.19.1.16 Penalty.

Any violation of, or noncompliance with, any of the provisions of this chapter for which a penalty has not been prescribed herein shall subject the violator to a forfeiture of not less than one hundred dollars nor more than five hundred dollars, together with the costs of prosecution and in default of payment thereof to imprisonment in the county jail until such forfeiture has been paid but not to exceed fifteen days. Each day of violation or noncompliance shall constitute a separate offense.

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Section 2:

Except as hereinabove specifically modified and amended, the Code of Ordinances, Town of Grafton, Wisconsin, shall remain in full force and effect exactly as originally adopted and previously amended. All ordinances or parts of ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

Section 3:

This Ordinance shall take effect and be in full force from and after its passage and publication or posting.

Adopted by the Town Board of the Town of Grafton, Ozaukee County, Wisconsin, at its regularly scheduled meeting on this _____ day of _____, 20__.

Lester A. Bartel, Jr., Town Chairman

Sara Jacoby, Town Clerk

Posting Date: _____, 20__