

CITY OF SKY VALLEY
ORDINANCE NO. 04-08

AN ORDINANCE AMENDING THE ORDINANCES OF THE CITY OF SKY VALLEY TO INCREASE THE EXCISE TAX ON ROOMS, LODGINGS, OR ACCOMMODATIONS (HOTEL/MOTEL TAX) WITHIN THE CITY OF SKY VALLEY FROM THREE (3%) TO FIVE PERCENT (5%)

Whereas, the City of Sky Valley finds it in the public interest to increase its hotel/motel excise tax from 3% to 5%,

Therefore it is hereby agreed as follows:

- I. As of the effective date of this ordinance, Ordinance No. 82-4, Ordinance No. 98-2, and Ordinance No. 98-4 are hereby deleted in their entirety and a new ordinance is hereby adopted to read as follows:

Section 1. Definitions.

The following words, terms and phrases shall, for the purposes of this ordinance and except where the context clearly indicates a different meaning, be defined as follows:

City. The City of Sky Valley and, variously, the incorporated territory of the city, wherein the City of Sky Valley is empowered to impose this tax by OCGA 48-13-50, et seq.

City Clerk. The duly appointed City Clerk of the City of Sky Valley or the clerk's designee.

Due date. The twentieth (20th) day after the close of the monthly period for which the tax is to be computed.

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

Folio. Primary documentation produced by a hotel that demonstrates interaction between the operator and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax(es), and the method(s) of payment.

Guest room. A room occupied, or intended, arranged, or designed for occupancy, by one (1) or more occupants for the purpose of living quarters or residential use.

Hotel. Any structure or any portion of a structure, including any lodging house, rooming house, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, truckstop, tourist cabin, lodge, inn, time-share or other condominium, apartment community, public club, or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by paying guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any hospital, asylum, sanitarium, orphanage, jail, prison, or other buildings in which human beings are housed and detained under legal restraint.

Monthly period. The calendar months of any year.

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

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

Operator. Any person operating a hotel in the city, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person operating such hotel; and who is subject to the taxation imposed for furnishing for value to the public any rooms, lodgings, or accommodations.

Permanent resident. Any occupant as of a given date who has or shall have occupied or has or shall have the right of occupancy of any guest room in a hotel for not less than ten (10) continuous days next preceding such date.

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

Rent. The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which, credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

Tax. The tax on occupants imposed by this ordinance, as provided for by OCGA 48-13-50, et seq.

Section 2. Tax rate.

There shall be paid for every occupancy of a guest room in a hotel in the city a tax at the rate of five percent (5%) of the amount of rent unless an exemption is provided under section 4.

Section 3. Collection of tax by operator.

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

Section 4. Exemptions.

No tax shall be collected from an occupant after becoming a permanent resident; or from an occupant who certifies in writing that he is staying in such accommodations as a result of his residence having been destroyed by fire or other casualty; or from the United States and the State of Georgia or any instrumentality of either thereof; or from any official or employee of the State, its units of local government or any other instrumentality of the State, when traveling on official business and presenting written substantiation thereof or paying by State or local government credit or debit card; or from a foreign diplomat exempted by treaty or consular convention, when presenting substantiation issued by the United States Department of State. Occupancy provided without charge in money or otherwise is exempt from this tax.

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

Every person engaging or about to engage in business as an operator of a hotel in this city shall immediately register with the city clerk on a form provided by said official. Persons engaged in such business must so register not later than thirty (30) days after the date that this ordinance becomes effective. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place(s) of business and such other information which would facilitate the administration of the tax as prescribed by the city clerk. The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; in case of ownership by a corporation, by an officer. The city clerk shall, after such registration, issue without charge a certificate of authority to each operator to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable.

Section 6. Determination generally; returns; payments.

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

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

(c) Acceptance of delinquent return and remittance without imposing penalty and interest; authority; requirements. If the failure to make any return or to pay the amount of tax by the due date results from providential cause shown to the satisfaction of the governing authority of the city by affidavit attached to the return, and remittance is made within ten (10) days of the due date, such may be accepted exclusive of penalty and interest.

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

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

(f) Return; remittance; time of filing; operators required to file; contents. On or before the twentieth (20th) day of the month succeeding each monthly period, a return for the preceding monthly period together with appropriate remittance shall be filed with the city clerk. The return shall report the gross rent, taxable rent, exempt rent, amount of tax collected or otherwise due for the period, and such other information as may be required by the city clerk. However, if the estimated tax liability for any monthly period shall exceed two thousand five hundred dollars (\$2,500.00) for an operator who, in the prior fiscal year remitted tax greater than two thousand five hundred dollars (\$2,500.00) in any three (3) consecutive months, such operator shall file an estimated return and remit not less than fifty percent (50%) of the estimated tax liability for the monthly period by the twentieth (20th) day of that same monthly period. The amount of tax so remitted shall be credited against the amount to be due with the regular return for the monthly period to be filed on the twentieth (20th) day of the succeeding month.

(g) Extension of time of filing; authority; requirements; remittance; penalty and interest. The governing authority of the city may, for good cause, extend the time for making returns for not longer than thirty (30) days. No extension shall be valid unless granted in writing upon written application of the operator. Such grant may not be applicable for longer period than twelve (12) consecutive months. An operator granted an extension shall remit tax equaling not less than one hundred percent (100%) of the tax paid for the corresponding period of the prior fiscal year; such remittance to be made on or before the date the tax would otherwise come due without the grant of extension. No penalty or interest shall be charged during the first ten (10) days of the extension period.

(h) Collection fee allowed operators. Operators collecting the tax shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be three percent (3%) of the amount due, but only if the amount due was not delinquent at the time of payment.

Section 7. Deficiency determinations.

(a) Recomputation of tax; authority to make; basis of recomputation. If the city clerk is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by any operator, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly periods.

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

(c) Notice of determination; service of. The city clerk shall give to the operator written notice of his determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator at his address as it appears in the records of the city. Service by mail is complete when delivered by certified mail with a receipt signed by addressee.

(d) Time within which notice of deficiency determination to be mailed. Except in cases of failure to make a return or of fraud, every notice of deficiency determination shall be mailed within three (3) years after the twentieth (20th) day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period should last expire.

Section 8. Determination if no return made.

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

make the return and shall be based upon any information which is or may come into the possession of the city clerk. Written notice shall be given in the manner prescribed in section 7(c).

(b) Penalty and interest for failure to pay tax. Penalty and interest shall be assessed upon the amount of any determination, as provided by Section 6.
Section 9. Collection of tax by city.

(a) Action for delinquent tax; time for. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the city clerk may bring an action in a court of competent jurisdiction in the name of the city to collect the amount delinquent together with penalty, interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

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

(c) Duty of successors or assignees of operator to withhold tax from purchase money. If any operator liable for any amount under this ordinance sells out his business or quits the business, his successors or assigns shall withhold sufficiently from the purchase price to cover such amount until the former owner produces from the city clerk either a receipt reflecting full payment or a certificate stating that no amount is due.

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

(e) Credit for tax, penalty or interest paid more than once or erroneously or illegally collected. Whenever the amount of any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected or received by the city, it may be offset by the governing authority. If the operator or person determines that he has overpaid or paid more than once, which fact has not been determined by the city clerk, such person shall have three (3) years from the date of payment to file a claim in writing stating the specific ground upon which the claim is founded. The claim shall be audited. If the claim is approved by the governing authority, the excess amount paid to the city may be credited on any amounts then due and payable from the person by whom it was paid.

Section 10. Administration of ordinance; recordkeeping.

(a) Authority of city clerk. The city clerk shall administer and enforce the provisions of this ordinance for the collection of the tax.

(b) Records required from operators, etc; form. Every operator renting guest rooms in the city shall preserve, for a minimum of three (3) years, all folios, receipts, certificates of exemption and such other documents as the city clerk may prescribe, and in such form as he may require. Said records shall at all times be available for examination within the city.

(c) Application for sales tax audit reports. Each year, in the month of January, the city clerk shall request in writing from the Georgia Commissioner of Revenue any reports of sales tax audits conducted of hotels in the city during the preceding calendar year.

(d) Examination of records; audits. The city clerk or any person authorized in writing by him may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting guest rooms and any operator liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(e) Authority to require reports; contents. In administration of the provisions of this ordinance, the city clerk may require the filing of reports by any person or class of persons having in their possession or custody information relating to the rental of guest rooms which are subject to the tax. The reports shall be filed with the city clerk when required by said official, and shall set forth the rental charged for each occupancy, the date(s) of occupancy, the basis for exemption, or such other information as the city clerk may prescribe.

Section 11. Violations.

Any person violating any of the provisions of this ordinance shall be deemed guilty of an offense and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00), or confinement for a term not to exceed three (3) months. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or permitted by such person, and shall be punished accordingly. Any operator who fails to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the city clerk, or who renders a false or fraudulent return, shall be deemed guilty of an offense and, upon conviction thereof, shall be punished as aforesaid.

Section 12. Effective date.

This ordinance and the tax levied hereby shall become effective on the first (1st) day of the second (2nd) month following its adoption.

II. SHOULD ANY SECTION OR PROVISION OF THIS ORDINANCE BE
DECLARED BY A COURT OF COMPETENT JURISDICTION TO BE

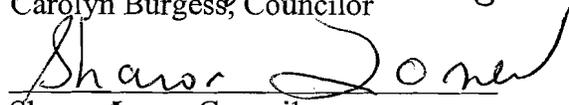
UNCONSTITUTIONAL OR INVALID SUCH DECLARATION SHALL NOT AFFECT THE VALIDITY OF THE ORDINANCE AS A WHOLE OR ANY PART THEREOF OTHER THAN THE PART SO DECLARED TO BE UNCONSTITUTIONAL OR INVALID. ALL RESOLUTIONS AND ORDINANCES AND PARTS OF RESOLUTIONS AND ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE ARE HEREBY REPEALED.

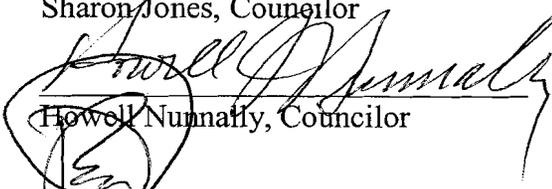
It is so ordained and approved by vote of the City Council of the City of Sky Valley this 11th day of October, 2004.

Approved:

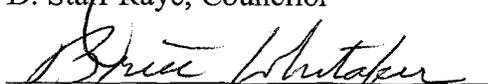

Steve Brett, Mayor


Carolyn Burgess, Councilor


Sharon Jones, Councilor


Howell Nunnally, Councilor


D. Starr Raye, Councilor


Britt Whitaker, Councilor

Attest:


Linda Wells, City Clerk

Read and introduced on the 11th day of October, 2004.

Adopted on the 11th day of October, 2004.