

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF BROOKHAVEN AT CHAPTER 24, ARTICLE VI EXCISE TAX ON HOTELS, SECTIONS 24-140 THROUGH 24-151, TO COMPLY WITH HB 317, TO SET AN EFFECTIVE DATE OF THE AMENDMENTS, AND FOR OTHER PURPOSES

**WHEREAS**, the City of Brookhaven began imposing and collecting excise taxes for the rental of rooms within the City's limits upon incorporation pursuant to O.C.G.A. § 48-13-50 *et seq.*; and

**WHEREAS**, the General Assembly of the State of Georgia passed HB 565 in 2017 authorizing the collection of excise taxes up to 8 per cent of the cost of the room for purposes of constructing the Peachtree Creek Greenway; and

**WHEREAS**, the City of Brookhaven amended its Ordinance in 2017 to begin collecting the additional excise taxes authorized by the General Assembly; and

**WHEREAS**, technology has made it possible for persons or entities to offer lodging over and through the internet; and

**WHEREAS**, these lodging innovations, along with more traditional lodging options, such as hotels and motels, are all available within the City of Brookhaven; and

**WHEREAS**, these lodging innovations have become a burgeoning industry in the city of Brookhaven, the State of Georgia, and the United States; and

**WHEREAS**, the City of Brookhaven desires to clarify the applicability of its hotel-motel tax to these lodging innovations by revising and modernizing the Code of the City of Brookhaven to better reflect technological changes and this burgeoning industry;

**WHEREAS**,

NOW THEREFORE, the Mayor and Council for the City of Brookhaven hereby adopt this Amendment as follows:

**Section 1.** Except as specifically modified or altered herein, Section 24-140 shall remain as previously enacted or modified.

Section 24-140. Definitions. is amended as follows to revise the definitions of "Hotel," "Innkeeper," "Occupancy," "Occupancy," and "Occupant," and to add the terms "Marketplace facilitator," "Marketplace Operator," and "Short-term rentals," as follows:

**Section 24-140. Definitions.**

*Hotel* means any structure or any portion of a structure in which a person furnishes for value to the public any rooms, lodgings, or accommodations, including, but not necessarily limited to, any lodginghouse, roominghouse, dormitory, cabin, vacation home, apartment, condominium, townhome, residence, accessory building, Turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, inn, public club, or private club, containing guestrooms and which is occupied or is intended or designed for occupancy by guests, whether rent is paid in money, goods, labor, or otherwise. For the purposes of this article, this term shall encompass any structure or portion of a structure that a person furnishes for value to the public for rooms, lodgings, or accommodations, and which such person advertises through a marketplace facilitator, common—but not exclusive—examples of which include Airbnb.com, Booking.com, Hometogo.com, and VRBO.com. This term does not include any jail, hospital, asylum, sanitarium, nursing or convalescent home, orphanage, prison, detention, or other building in which human beings are housed and detained under legal restraint.

*Innkeeper* means any person who is subject to taxation under this article for the furnishing for value to the public any rooms, lodgings, or accommodations; and any person or organization who voluntarily collects the tax under this article. For the purposes of this article, a marketplace facilitator shall be considered an innkeeper.

*Marketplace facilitator* means a person who contracts with the operator of a hotel, in exchange for any form of consideration, to make available or facilitate a rental that is taxable under this article on behalf of such operator by directly or through any agreement or arrangement with another person:

(a) Providing a service that makes available or facilitates such rental in any manner, including, but not limited to, promoting, marketing, advertising, taking orders or reservations for, providing the physical or electronic infrastructure that brings purchasers and operators together for, or otherwise similarly assisting the operator in making such rental, or transmitting or otherwise similarly communicating the offer and acceptance between the operator and the renter for, or otherwise similarly assisting the operator for such rental, but excluding merely processing the payments for such rental; and

(b) Collecting, charging, processing, or otherwise facilitating payment for such rental on behalf of the operator.

This term is intended to be synonymous with the term “marketplace innkeeper” as defined in O.C.G.A. § 48-13-50.2(2.1), effective July 1, 2021

*Marketplace operator* means any operator who conducts a rental through or facilitated by any physical or electronic marketplace or platform operated directly or indirectly by a marketplace facilitator.

*Short-term rental* means the rental of a vacation home, apartment, guestroom, or any room of overnight lodging for a period of thirty (30) consecutive days or less. This term shall encompass the rental of a vacation home, apartment, guestroom, or any room of overnight lodging that a person advertises through a marketplace facilitator, common—but not exclusive—examples of which include Airbnb.com, Booking.com, Hometogo.com, and VRBO.com. Unless otherwise

provided in this article, short-term rentals as defined herein shall be subject to the tax imposed by this article.

**Section 2.** Section 24-143 as currently enacted shall be repealed upon the effective date of this Ordinance and the following section shall be enacted to replace it:

**Sec. 24-143. COLLECTION BY INNKEEPER OR MARKETPLACE FACILITATOR; RECEIPT TO OCCUPANT; REPORTING AND REMITTANCE OF TAXES COLLECTED.**

- (a) Every operator renting guestrooms in the city shall collect a tax of eight percent on the amount of rent from the occupant unless an exemption is provided under section 8-230.
- (b) Such operator shall provide a receipt to each occupant to whom the tax is charged, showing the amount of rent and the amount of all taxes by category.
- (c) Any marketplace facilitator who facilitates for a marketplace operator the renting of a guestroom in the city that is subject to the tax imposed under this article shall be responsible for collecting, reporting, and remitting the tax in the same manner as an operator. If a marketplace facilitator is responsible for collecting, reporting, and remitting the taxes imposed in this article, then the marketplace operator shall be relieved of such responsibility. Any marketplace facilitator who fails to collect, report, or remit taxes as required under this article shall be liable in the same manner as an operator and shall be subject to all the administrative and remedial provisions of this article.
- (d) All taxes shall be due and collected at the same time that the rent is collected.
- (e) The proceeds of such taxes shall be used in accordance with O.C.G.A. § 48-13-51(b) and HB 565 (2017).

**Section 3.** Section 24-145 as currently enacted shall be amended as shown in the text below with text in red or colors showing words added and text struck through showing words deleted:

**Section 24-145. – Due date of taxes; returns; payments; civil penalties and interest**

- (a) *Due date of taxes.* All amounts of such tax shall be due and payable to the city tax and license clerk monthly on or before the 20th day of the month next succeeding the respective monthly period. The tax shall become delinquent for any monthly period after the 20th day of each succeeding month during which it remains unpaid.
- (b) On or before the 20th day of the month following each monthly period, each operator shall file a return with the city clerk, showing the gross rent, rent from permanent residents, rent from government officials or employees while traveling on official business, taxable rent, amount of taxes due for the related period, and such other information as may be required by the city manager.

(bc) *Civil penalty and interest for failure to pay tax by due date.* An innkeeper or marketplace facilitator who fails to make any return or to pay the amount of tax as prescribed, shall be assessed a specific civil penalty to be added to the tax in the amount of five percent of the amount due or \$5.00, whichever is greater, if the failure is for one month or less; and an additional five percent or \$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 25 percent or \$25.00, whichever is greater. Delinquent amounts shall bear interest at the rate of one percent per month, or fraction thereof, until paid.

(ed) *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 days of the due date, such return may be accepted exclusive of penalty and interest.

(de) *Waiving of penalty and interest; authority.* O.C.G.A. § 48-2-41, relating to the authority to waive interest, and § 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.

(ef) *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 civil penalty of 50 percent shall be assessed.

**Section 4.** Section 24-148 as currently enacted shall stand repealed upon the effective date of this Ordinance and in its place a new Section 24-148 shall be enacted as follows:

**Sec. 24-148. Registration of operator and marketplace operator; form and contents; execution; certificate of authority.**

- (a) Every person engaging or about to engage in business as an operator in the city shall immediately register with the city clerk on a form provided by the City. 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 collection of the tax as the city clerk may require. 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 the case of ownership by a corporation, by an officer. The city tax and license 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.
- (b) Each marketplace operator engaging or about to engage in short-term rental activities in the city shall register with the city tax and license clerk on a form provided by the City. Such registration shall set forth the name under which such person transacts

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business or intends to transact business, the physical address of the guestrooms for rent in the city, and such other information which would facilitate the collection of the tax as the city clerk may require. 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 the case of ownership by a corporation, by an officer. On his or her application, a marketplace operator shall designate the marketplace facilitator(s) through whom he or she facilitates the renting of a guestroom in the city. If a marketplace operator makes any substantial changes to his or her registration, such as changes to the marketplace facilitator(s) through whom he or she facilitates the renting of a guestroom or the location or the number of guestroom(s), he or she must file an amendment to his or her registration within fifteen (15) days of any such change on a form provided for that purpose.

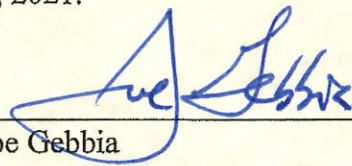
**Section 5.** At any place in Sections 24-140 through Section 24-151 where the word “innkeeper appears,” as defined by Section 24-140 of the Code of the City of Brookhaven, there shall be added to such code section the phrase “or marketplace facilitator” immediately following the word “innkeeper” unless such addition shall make no grammatical sense or is redundant to amendments made elsewhere in this Ordinance.

**Section 6.** Section 24-151 shall stand repealed in its entirety.

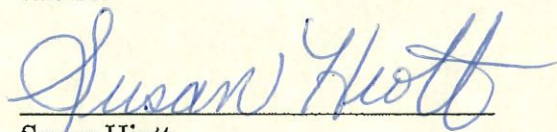
**Section 7.** If any portion of this Ordinance shall be deemed for any reason invalid or unconstitutional by the final decision of a Court of competent jurisdiction, the remainder of such Ordinance shall remain in full force and effect.

**Section 8.** This Ordinance shall take effect on July 1, 2021.

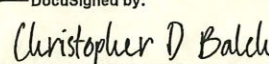
SO ORDAINED, this 29th day of June, 2021.

  
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Joe Gebbia  
Mayor Pro Tem

Attest:

  
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Susan Hiott  
City Clerk

Approved as to form:

DocuSigned by:  
  
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Christopher D. Balch  
City Attorney

