

# ORDINANCE NUMBER 62

## CITY OF TOWER, MINNESOTA

An ordinance establishing a lodging tax within the City of Tower (In accordance with Minnesota State Statute 469.190)

The City of Tower ordains:

### Section 1. DEFINITIONS.

Subdivision 1. The following words, when used in this Ordinance, shall have the meanings ascribed to them in their section, except where the content clearly indicates or requires a different meaning.

Subdivision 2. Joint Powers Board means the Joint Powers Board or the appointed agent of the Board as established under a Joint Powers Agreement among the City of Tower, Minnesota and other participating municipal units imposing a local lodging tax, hereinafter referred to as administrator.

Subdivision 3. Lodging means the furnishing for consideration of lodging at a hotel, motel, rooming house, bed and breakfast, tourist court, municipal campground, or resort other than the renting or leasing thereof for a continuous period of thirty (30) days or more.

Subdivision 4. Operator means a person who provides lodging to others or any officer, agent or employee of the person.

Subdivision 5. Person means any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, or other combination of individuals. Whenever the term person is used in any provision of this Ordinance prescribing and imposing penalty, the term as applied to a corporation, association, or partners thereof as the case may be.

Subdivision 6. Gender means all pronouns and any variation thereof and are deemed to refer to the feminine, masculine, neuter, singular, or plural as the identity of the person or persons may require.

Subdivision 7. Rent means the total consideration valued in money charged for lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnished lodging.

Section 2. IMPOSITION OF TAX. There is hereby imposed a tax of up to three percent (3%) of the rent charged by an operator for providing lodging to any person after January 1, 1998. The tax shall be stated and charged separately and shall be collected by the operator to the City of Tower, Minnesota and shall be extinguished only by payment to the City of Tower, Minnesota. In no case shall the tax imposed by this Section upon an operator exceed the amount of tax which the operator is authorized and required by this Ordinance to collect from a lodger.

### Section 3. ADMINISTRATION OF TAX.

Subdivision 1. Administration. The City of Tower, Minnesota or the Joint Powers Board, if such exists, or the designated agent of either the City of Tower, Minnesota or Joint Powers Board (hereinafter administrator) shall administer and enforce the assessment and collection of the taxes imposed by this Ordinance. The Administrator shall prepare blank forms for the returns required by this Ordinance and shall distribute the same throughout the City of Tower, Minnesota and furnish them on application, but failure to receive or secure shall not relieve any person from any obligation required of him under this Ordinance. The administrator is hereby authorized to adopt rules or regulations for the administration, collection or enforcement of the tax, from time to time, and as they may be amended, which rules or regulations are hereby adopted by reference.

Subdivision 2. Costs of Administration. Not more than five percent (5%) of gross proceeds from the tax by this Ordinance may be expended by the Administrator for the purpose of administration, collection or enforcement.

Section 4. COLLECTIONS. Each operator shall collect the tax imposed by this Ordinance at the time the rent is paid. The tax collection shall be deemed to be held in trust by the operator for the City of Tower, Minnesota. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a statement from the operator.

Section 5. PERMITS.

Subdivision 1. Every operator doing business in the City of Tower, Minnesota shall file with the Administrator an application for a permit and if the operator has more than one place of business where lodging is furnished to others, an application for each place of business must be filed. An application for a permit shall be made upon a form prescribed by the Administrator and shall set forth the name under which the applicant intends to transact business, the location of its place of business, and other information as the Administrator may require. The application shall be filed by the owner, if a natural person; by a member or partner, if the owner be in an association or partnership; by a person authorized to sign the application if the owner be a corporation; by a natural person acting in any other capacity.

Subdivision 2. The Administrator shall issue to each applicant a separate permit for each place of business within the City of Tower, Minnesota. A permit shall be valid until revoked, but shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction or business place designated therein. It shall, at all times, be conspicuously displayed at the place for which it is issued.

Section 6. REVOCATIONS OF PERMIT. Whenever any person fails to comply with any provisions of this Ordinance, the Administrator, upon hearing, after giving the person thirty (30) days notice in writing specifying the time and place of hearing and the reason for the proposed revocation and requiring the person to show cause why the permit or permits should not be revoked, may, for reasonable cause, revoke or suspend any one or more of the permits held by a person. The notice may be served personally or sent by registered mail to the address shown on the person's return. The Administrator shall not issue a new permit after revocation except upon application accompanied by reasonable evidence of intention of the applicant to comply with the provisions of this Ordinance.

Section 7. RENTALS WITHOUT PERMITS, VIOLATIONS. Any person who engages in the business of renting or lodging to others without the required permit or permits and each officer of any corporation so engages in business shall be guilty of a misdemeanor.

Section 8. PAYMENT AND RETURNS. The taxes imposed by this Ordinance shall be paid by the operator to the Administrator monthly, not later than twenty-five (25) days after the end of the month on which the tax is collected. At the time of payment, the operator shall submit a return upon such forms and containing such information as the Administrator may require. The return shall contain the following - minimum information:

- A. The total amount of rent collected for lodging during the period covered by the return.
- B. The amount of tax required to be collected and due for the period.
- C. The signature of the person filing the return or that of his agent duly authorized in writing
- D. The period covered by the return.

The operator may offset against the taxes payable with respect to any reporting period, the taxes imposed by this Ordinance previously paid as a result of any transaction the consideration which became uncollectible during such reporting period, but only in proportion to the portion of consideration which becomes uncollectible.

Section 9. EXCEPTIONS AND EXEMPTIONS.

Subdivision 1. Exceptions. No tax shall be imposed on rent for lodging paid by an officer or employee of the government who is exempt by reason of express provisions of federal law or international treaty.

Subdivision 2. Exemptions. An exemption shall be granted to any person as to whom or whose occupation is beyond the power of the City of Tower, Minnesota to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and the claim shall be made in writing and signed under penalty of perjury on forms provided by the Administrator. All such claims shall be forwarded when the returns and collections are submitted as required by this Ordinance.

Section 10. EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS. The Administrator shall, as soon as practicable after a return is filed, examine the same and make any investigation or examination of records and accounts of the person making the return deemed necessary for determining its correctness. The Tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the Administrator within ten (10) days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the Administrator.

Section 11. REFUNDS. Any person may apply to the Administrator for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one (1) year after the tax was paid, or within two (2) years from the filing of the return, whichever period is the longer. The Administrator shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such

person at the address stated upon the return. Any allowance shall include interest on the excess determined at a rate of four percent (4%) per annum from the date such excess was paid or collected until the date it is refunded or credited. If such claim is allowed in whole or in part, the Administrator shall credit the amount of the allowance against any taxes due under this ordinance from the claimant and the balance of said allowance, if any, shall be paid by the Administrator to the claimant.

#### Section 12. FAILURE TO FILE A RETURN.

Subdivision 1. If any operator required by this Ordinance to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, immediately file the return or corrected return, and shall, at the same time, pay any tax due on the basis thereof. If the person shall fail to file the return or corrected return, the Administrator shall make a return or corrected return for the person from any knowledge and information as the Administrator can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by the return) shall be immediately paid upon written notice and demand. The operator shall have the burden of establishing the validity of any return or a assessment made by the Administrator in any action or proceeding in respect thereto.

Subdivision 2. If any portion of a tax imposed by this Ordinance, including penalties thereon, is not paid within thirty (30) days after it is required to be paid, the Administrator shall direct the institution of such legal action as may be necessary to recover the amount due.

#### Section 13. PENALTIES.

Subdivision 1. If any tax imposed by this Ordinance is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a specific penalty equal to ten percent (10%) of the amount remaining unpaid.

Subdivision 2. In case of any failure to make and file a return within the time prescribed by this ordinance, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in lieu of the ten percent (10%) if the failure is not for more than thirty (30) days, with an additional five percent (5%) for each additional thirty (30) days or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) of the aggregate. If the penalty as computed does not exceed \$10.00, a minimum penalty of \$10.00 shall be assessed. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount to be added shall be collected in the same manner as the tax.

Subdivision 3. If any person willfully fails to file any return or make any payment required by this Ordinance, or attempts in any manner to evade or defeat any tax or payment thereof, there shall also be imposed as a penalty an amount no greater than fifty percent (50%) of any tax, (less any amounts paid on the basis of the false or fraudulent return), found due for the period to which the return related. The penalty imposed by the Subdivision shall be collected as part of the tax, and shall be in addition to any penalties provided by this Ordinance.

Subdivision 4. All payments received shall be credited first to penalties, next to interest, and

then to the tax due.

Subdivision 5. The amount of tax not timely paid, together with any penalty provided by this Section, shall bear interest at the rate of eight percent (8%) per annum from the time the tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as part thereof.

Section 14. EXAMINE RECORDS. The Administrator or employees authorized in writing may examine the books, papers and records of any operator in order to verify the accuracy of any return made or, if no return was made, to ascertain the tax as provided in this Ordinance. Every operator is directed and required to give to the Administrator or to his duly-authorized agent or employee the means, facilities and opportunity for examinations and investigations as are hereby authorized.

Section 15. CONFIDENTIAL INFORMATION. No officer or employee of the City of Tower, Minnesota, nor the Administrator shall divulge or otherwise make known in any manner any particulars disclosed in any return required by this Ordinance, or any information concerning the affairs of the person making the return acquired from the person's records, officers, or employees while performing an examination or audit, except in connection with a proceeding involving taxes due under the Ordinance from the person making a return. Nothing herein contained shall be construed to prohibit the Administrator from publishing statistics so classified as not to disclose the identity of particular returns and the contents thereof.

Notwithstanding the above provisions of this Section, the Administrator may enter into an agreement providing for the administration and collection of the tax imposed by this Ordinance by the Minnesota Department of Revenue and its employees while performing an examination or audit, except in connection with a proceeding involving taxes due under this Ordinance from the person making the return. Nothing herein contained shall be construed to prohibit the Administrator from publishing statistics so classified as not to disclose the identity of particular returns and the contents thereof.

Notwithstanding the above provisions of this Section, the Administrator may enter into an agreement providing for the administration and collection of the tax imposed by this Ordinance by the Minnesota Department of Revenue and its officers and agents.

Section 16. ADVERTISING NO TAX. It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or that part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, it or any part thereof will be refunded, except that in computing the tax to be collected amounts of tax less than one-half of one cent may be disregarded and amounts of tax with one-half cent of one cent or more be considered an additional cent.

Section 17. USE OF PROCEEDS. All gross proceeds, less administrative costs and not less than ninety-five percent (95%) of the gross proceeds obtained from the collection of taxes pursuant to this Ordinance shall be used in accordance with Minnesota Statutes #469.190, as the same may be amended from time to time, to fund a Tourism Promotion Bureau for the purpose of marketing and promoting the area as a tourist center.

Section 18. VIOLATIONS. Any operator who shall refuse to make a return required by this Ordinance; or who shall refuse to pay the tax; or who shall refuse to remit the taxes collected or any penalty or interest imposed by this Ordinance; or who shall refuse to permit the

Administrator or any duly authorized employee to examine the books, records and papers under the person's control; or who shall willfully make any incomplete, false or fraudulent return; or who shall attempt to do anything whatsoever to avoid a full disclosure of the amount of tax imposed by this Ordinance shall be guilty of a misdemeanor.

#### Section 19. APPEALS.

Subdivision 1. Any operator aggrieved by any notice, order or determination made by the Administrator under this Ordinance may file a petition for review of the notice, order or determination detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging, subject to the order, notice or determination.

Subdivision 2. The petition for review shall be filed with the Administrator within ten (10) days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting review.

Subdivision 3. Upon receipt of the petition, the Administrator shall set a date for a hearing and give the petitioner at least five (5) days prior written notice of the date, time and place of the hearing.

Subdivision 4. At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense.

Subdivision 5. The hearing shall be conducted by the Administrator provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought.

Subdivision 6. The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable sections of this Ordinance and the evidence presented. The person conducting the hearing may affirm, reverse or modify the initial notice, order or determination.

Subdivision 7. Any decision rendered by the Administrator pursuant to this Subdivision may be appealed to the City of Tower, Minnesota. A petitioner seeking to appeal a decision must file a written Notice of Appeal with the Clerk of the City of Tower, Minnesota, within ten (10) days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the agenda as soon as is practical. The City of Tower, Minnesota, shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the City of Tower, Minnesota, that findings and conclusions were incorrect, the City of Tower, Minnesota, may modify, reverse or affirm the decision of the Administrator upon the same standards as set forth in Subdivision 6.

Section 20. CONTRACT WITH STATE. The Administrator is authorized to confer with the Minnesota Commissioner of Revenue to the end that an agreement between the Administrator and the Commissioner of Revenue may be entered into for the purpose of providing for the administration and collection of the taxes imposed by this Ordinance. An agreement shall not become effective before being presented to the Administrator for its approval as provided by

Ordinance and, when so approved, the tax imposed by this Ordinance shall be collected and administered pursuant to the terms of said agreement.

Section 21. ADMINISTRATION BY STATE Upon agreement entered into with the Commissioner of Revenue, State of Minnesota for the administration and enforcement of the provisions of this Chapter, the Commissioner of Revenue shall be empowered to exercise all of the authority of the Administrator as contained in this Ordinance. In order to provide for the administration and collection of the tax by the Commissioner of Revenue, the rule, regulations and statutory provisions of the State of Minnesota are hereby adopted by reference, and to the extent that the provisions of said statutes, rules and regulations shall prevail. Only those provisions of the foregoing rules, regulations and statutes which are within the authority of the City of Tower, Minnesota, to enact into ordinances are adopted by reference by this Section.

Section 22. EFFECTIVE DATE. This Ordinance should be effective following final passage, publication and execution of the Joint Powers Agreement as provided by Minnesota statute.

Introduced by Alderman Mollers and given first reading on March 10, 1997.

Given second reading by Alderman Mollers on April 14, 1997.

Motion by Mollers supported by Hiltunen to adopt and publish said ordinance on April 14, 1997.

Ayes: Aldermen Mollers, Hiltunen, Mickle, and Leppala and Mayor Lamppa.

Nays: None

Published in the Tower News on May 15, 1997.

CITY OF TOWER

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Herbert Lamppa, Mayor

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Timothy Kotzian Clerk/Treasurer