

## **ORDINANCE 26-872**

### **AN ORDINANCE AMENDING CHAPTER 116 – LODGING TAX, OF THE HUTCHINSON CITY CODE**

The City Council hereby ordains:

**WHEREAS**, the City Council of Hutchinson originally adopted a “lodging tax” in February of 1989; and

**WHEREAS**, the lodging tax is used to assist in the marketing the community through the Hutchinson Convention and Visitors Bureau; and

**WHEREAS**, the need to update the lodging tax ordinance to reflect today’s trends are needed from time to time; and

**WHEREAS**, short-term home rentals, including vacation rentals like VRBO’s and AirBNB’s are becoming a more used method of lodging within the community; and

**WHEREAS**, currently short-term home and vacation rentals are not included in the City’s lodging tax collection.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Hutchinson, that Chapter 116 of the City Code is hereby amended and replaced to read as follows:

#### **GENERAL PROCEDURES**

##### **§ 116.01 PURPOSE OF TAX.**

In order to increase commerce and to provide for a vibrant City atmosphere that will attract tourism and convention business to the City, it is essential that the City be marketed and promoted by a local convention and visitors bureau.

##### **§ 116.012 DEFINITIONS.**

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

**LODGER.** The person obtaining lodging from an operator.

**LODGING.** The furnishing for consideration of lodging by a hotel, motel, bed and breakfast, **short-term residential rental, resorts** or public or private campground, except where that LODGING shall be for a continuous period of 30 days or more to the same lodger(s) **according to section 116.16 (c) below**. The furnishing of rooms owned by religious, educational or non-profit organizations for self-sponsored activities shall not constitute LODGING for purposes of this program.

**OPERATOR.** The person who is the proprietor of the lodging facility, whether in the capacity of owner, lessee, sublessee, licensee or any other capacity.

**RENT.** The total consideration valued in money charged for the lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

**SHORT-TERM RESIDENTIAL RENTAL.** A rental dwelling or rental dwelling unit that is offered to transient guests for a period of less than 30 consecutive days. VRBO's, AirBNB, HomeAway and other vacation rentals are considered short-term home rentals.

### **§ 116.023 IMPOSITION OF TAX.**

Pursuant to M.S. § 469.190, as it may be amended from time to time, a tax is imposed on the rent charged by an operator for providing lodging to any person. A tax of 3% shall be imposed. The tax collected by the operator shall be extinguished only by payment to the city. 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 program to collect from a lodger.

### **COLLECTION AND PAYMENT PROCEDURES**

#### **§ 116.15 COLLECTION.**

Each operator shall collect the tax imposed by this program at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.

#### **§ 116.16 EXCEPTIONS AND EXEMPTIONS.**

(A) Exceptions. No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

(B) Exemptions. An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted, except upon a claim therefore made at the time the rent is collected, and this claim shall be made in writing and under penalty of perjury on forms provided by the city. All these claims shall be forwarded to the city when the returns and collections are submitted as required by this chapter.

(C) The lodging tax shall not apply to the furnishing for consideration of lodging for a continuous period of thirty (30) days or more to the same lodger under an enforceable written agreement that may not be terminated without prior notice and including accommodations intermediary services provided in connection with other services.

#### **§ 116.17 ADVERTISING NO TAX PROHIBITED.**

It is unlawful for any operator to advertise or hold out or state to the public or any customer, 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, it or any part thereof will be refunded.

### **§ 116.18 PAYMENT; RETURN SUBMISSION.**

(A) The taxes imposed by this program shall be paid monthly by the operator to the city not later than 20 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon those forms and containing that information as the City Finance Officer may require. The return shall contain the following minimum information:

- (1) The total amount of rent collected for lodging during the period covered by the return;
- (2) The total amount of exceptions and exemptions;
- (3) The amount of tax required to be collected and due for the period;
- (4) The signature of the person filing the return or that of his or her agent duly authorized in writing;
- (5) The period covered by the return; and
- (6) The amount of uncollectible rental charges subject to the lodging tax.

(B) The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this program previously paid as a result of any transaction, the consideration for which became uncollectible during that reporting period, but only in proportion to the portion of the consideration which became uncollectible.

### **§ 116.19 EXAMINATION OF RETURN; ADJUSTMENTS.**

The City Finance Officer shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of this examination shall be the tax to be paid. If the tax due is found to be greater than that paid, the excess shall be paid to the city within ten 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 city within ten days after determination of the refund.

### **§ 116.20 REFUNDS.**

Any person may apply to the City Finance Officer for a refund of taxes paid in excess of the amount legally due for that period, provided that no application for a refund shall be considered unless filed within one year after that tax was paid, or within one year from the filing of the return, whichever period is the longer. The Finance Officer 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 the person at the address stated upon the return. If the claim is allowed in whole or in part, the Finance Officer shall credit the amount of the allowance

against any taxes due under this program from the claimant, and the balance of the allowance, if any, shall be paid by the Finance Officer to the claimant.

### **§ 116.21 FAILURE TO FILE RETURN.**

(A) If any operator required by this program 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, file that return or corrected return within five days of receipt of written notice 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 City Finance Officer shall make a return or corrected return for that person from that knowledge and information as the director 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 paid upon within five days of the receipt of written notice and demand for payment. Any thus described return or assessment made by the Finance Officer shall be *prima facie* correct and valid, and the person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding with respect thereto.

(B) If any portion of a tax imposed by this program, including penalties thereon, is not paid within 30 days after it is required to be paid, the city may institute legal action as may be necessary to recover the amount due plus interest, penalties and the cost and disbursements of any action.

(C) Upon a showing of good cause, the Finance Officer may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by this chapter; provided that, interest during this period of extension shall be added to the taxes due at the rate of 10% per annum.

### **§ 116.22 DELINQUENT PAYMENT; PENALTIES.**

(A) If any tax imposed by this chapter 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 10% of the amount remaining unpaid.

(B) In case of any failure to make and file a return within the time prescribed by this chapter, unless it is shown that this failure is not due to willful neglect, there shall be added to the tax, in addition to the 10% specific penalty provided in division (A) above, 10% if the failure is for not more than 30 days, with an additional 5% for each additional 30 days or fraction thereof during which failure continues, not exceeding 25% in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 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 so added shall be collected in the same manner as the tax.

(C) If any person willfully fails to file any return or make any payment required by this chapter, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat this tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50% of any tax (less amounts paid on the basis of the false or fraudulent return) found due

for the period to which that return related. The penalty imposed by this division (C) shall be collected as part of the tax, and shall be in addition to any other penalties provided by this chapter.

(D) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

## **ADMINISTRATION AND ENFORCEMENT**

### **§ 116.35 ADMINISTRATION OF TAX.**

The City Finance Officer shall administer and enforce the assessment and collection of the taxes imposed by this chapter. The director shall cause to be prepared blank forms for the returns and other documents required by this chapter and shall distribute the same throughout the city and furnish them upon application; but failure to receive or secure them shall not relieve any person from any obligation required under this chapter.

### **§ 116.36 EXAMINATION OF RECORDS.**

The City Finance Officer 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 program. Every operator is directed and required to give to the Finance Officer the means, facilities and opportunity for the examinations and investigations as are hereby authorized. Operators are required to keep all records, including written agreements for lodging covered under section 116.16 (c), for at least three (3) years.

### **§ 116.37 VIOLATIONS.**

It is unlawful for any person to willfully fail to make a return required by this program, or to fail to pay the tax after written demand for payment, or to fail to remit the taxes collected or any penalty or interest imposed by this chapter after written demand for payment, or to refuse to permit the City Finance Officer to examine the books, records and papers under his or her control or to willfully make an incomplete, false or fraudulent return.

### **§ 116.38 DISPOSITION OF PROCEEDS.**

(A) The 95% proceeds obtained from the collection of taxes pursuant to this program shall be used in accordance with M.S. § 469.190, as the same may be amended from time to time, to fund a local convention and tourism bureau for the purpose of marketing and promoting the city as a tourist and convention center. The city may retain a maximum of 5% for administrative costs.

(B) The city by and through an agreement, entitled "Agreement for the Establishment of a Convention and Visitors Bureau Between the City and the Area Chamber of Commerce" (hereinafter "the agreement"), with the Area Chamber of Commerce (hereinafter "Chamber of Commerce") hereby permits the Chamber of Commerce to create the Area Convention and Visitors Bureau (hereinafter "the CVB"). The CVB will be funded by the tax set forth herein and pursuant to M.S. § 469.190, as it may be amended from time to time. The agreement sets forth

the purpose and duties of the CVB and provides for its internal structure. Pursuant to the terms of the agreement, and specifically incorporated herein without limiting the effect of the agreement, are the following terms:

- (1) The CVB shall establish and maintain separate books and records;
- (2) The CVB shall establish separate bank accounts; and
- (3) The CVB shall not commingle its funds with the Chamber of Commerce or any other entity.

(C) Any and all employees of the Chamber of Commerce or the CVB, or any other persons, while engaged in the performance of any service required by the Chamber of Commerce, shall not be considered employees of the city, and any and all claims that may or might arise under the Worker's Compensation Act of the state, being M.S. §§ 176.001 et seq., as it may be amended from time to time, on behalf of those employees or other persons while so engaged, and any and all claims made by the third party as a consequence of any act or omission on the part of the Chamber, or its agents or employees or other persons while so engaged in any of the services provided to be rendered herein, shall in no way be the obligation or the responsibility of the city. In connection therewith, the Chamber of Commerce hereby agrees to indemnify, save and hold harmless, defend the city and all its agents and employees thereof, from any and all claims, demands, actions or causes of action of whatever nature or character arising out of or by reason of the execution or the performances of the services provided in accordance with this agreement, excepting therefrom City Administrator duties and city duties relating to the collection of taxes.

(D) ~~The annual budget submitted by the CVB to the Council for its approval shall be approved or disapproved in total. The CVB shall submit annual audited financial reports to the City Finance Officer.~~

### **§ 116.39 APPEALS.**

(A) Any operator aggrieved by any notice, order or determination made by the City Finance Officer under this chapter may file a petition for review of that 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.

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

(C) Upon receipt of the petition, the City Administrator, or his or her designee, shall set a date for a hearing and give the petitioner at least five days' prior written notice of the date, time and place of the hearing.

(D) 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 the petitioner's choosing at the petitioner's own expense.

(E) Any disputes shall be conducted in accordance with principles and rules of the American Arbitration Association.

(F) The hearing examiner conducting the hearing shall make written findings of fact and conclusions based upon the applicable provisions of this chapter and the evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the City Finance Officer.

(G) Any decision rendered by the hearing examiner pursuant to this section may be appealed to the Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the City Administrator within ten days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as practicable. The Council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the hearing examiner or his or her designee upon the same standards as set forth above in division (F) above.

**FURTHERMORE BE IT ORDAINED** that the effective date of this Ordinance is upon publication and that collection of tax for short-term home rentals shall begin on May 1, 2026.

ADOPTED BY THE HUTCHINSON CITY COUNCIL THIS 10<sup>TH</sup> DAY OF FEBRUARY 2026

Attest:

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Matthew Jaunich, City Administrator

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Gary T. Forcier, Mayor