



## CITY OF PLEASANT VALLEY - ORDINANCE #23

### AN ORDINANCE ESTABLISHING A HOTEL OCCUPANCY TAX

**SECTION ONE. Authority**

**SECTION TWO. Rate of tax**

**SECTION THREE. Definitions**

**SECTION FOUR. Consumer to pay tax; hotel operator not to represent that it will absorb tax; accounting by hotel.**

**SECTION FIVE. Occupancy bill to government agencies or employees.**

**SECTION SIX. Collection of tax when sale on proceeds. credit.**

**SECTION SEVEN. Receivership bankruptcy; priority of tax.**

**SECTION EIGHT. Failure to collect or remit tax, liability of hotel operator.**

**SECTION NINE. Total amount collected to be remitted.**

**SECTION TEN. Tax return and payment.**

**SECTION ELEVEN. Keeping and preserving of records.**

**SECTION TWELVE. Liability of officers.**

**SECTION THIRTEEN. Proceeds of tax; application of proceeds.**

**SECTION FOURTEEN. Criminal penalties.**

**SECTION FIFTEEN. Repeal of previous ordinance.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLEASANT VALLEY.

#### **SECTION ONE. Authority.**

(a) A municipal hotel tax is hereby imposed in accordance with the West Virginia Code Sec. 8-11-1 et seq. Such tax shall be imposed uniformly throughout the municipality; and the tax shall apply to all hotels located within the corporate limits of the municipality, including hotels owned by the state or by any political subdivision of this state.

(b) The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room: provided, that the tax shall not be imposed on any consumer occupying a hotel room for thirty (30) or more consecutive days.

#### **SECTION TWO. Rate of tax.**

The rate of tax imposed shall be six percent (6%) of the consideration paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under West Virginia Code Sec. 11-15-1 et seq., or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.

### **SECTION THREE. Definitions.**

For the purposes of this Ordinance:

(a) "Consideration paid" or "consideration" means the amount received in money, credits, property, or other consideration for or in exchange for the right to occupy a hotel room as herein defined.

(b) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia, or political subdivisions thereof.

(c) "Hotel" means any facility, building or buildings, publicly or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins, and tourist hoes. The term "hotel" shall include state, county and city parks offering accommodations as herein set forth. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a total of ten (10) days in a calendar year, nor any tent, trailer or camper campsite; provided, that where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.

(d) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered compliance by both.

(e) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the public and situated within a hotel. The term "hotel room" shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.

(f) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.

(g) "State park" means any state-owned facility which is part of this state's park and recreation system established pursuant to this code. For purposes of this article, any recreational facility otherwise qualifying as a "hotel" and situated within a state park shall be deemed to be solely within the county in which the building or buildings comprising said facility are physically situated, notwithstanding the fact that the state park within which said facility is located may lie within the jurisdiction of more than one county.

(h) "Tax", "taxes" or "this tax" means the hotel occupancy tax authorized by this ordinance.

(i) "Taxing authority" means the City of Pleasant Valley.

(j) "Taxpayer" means any person liable for the tax authorized by this ordinance.

**SECTION FOUR. Consumer to pay tax; hotel or hotel operator not to represent that it will absorb tax; accounting by hotel.**

(a) The consumer shall pay to the hotel operator the amount of tax imposed by this municipality, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this ordinance on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations unless the taxing authority shall, by ordinance, order, regulation or otherwise require in writing the hotel operator to segregate such taxes collected from such proceeds. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the monies so commingled excepting only claims of the state for monies held by the hotel pursuant to the provisions of West Virginia Code Sec. 11-15-1 et seq. All taxes collected pursuant to the provisions of this ordinance shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.

(b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax is not to be considered an element in the price to be collected from the consumer.

**SECTION FIVE. Occupancy billed to government agencies or employees.**

(a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax; provided rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.

(b) Hotel room occupancy billed directly to the State of West Virginia or its political subdivisions shall be exempt from this tax; provided rooms paid for by an employee of this state for which reimbursement is made shall be subject to this tax.

**SECTION SIX. Receivership bankruptcy; priority of tax.**

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this article shall be paid from the first money available for distribution in priority to all claims and liens except taxes and debts due to the United States, which under federal law are given priority over the debts and liens created this municipal ordinance for this tax and taxes and debts due to the State of West Virginia. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this ordinance shall be personally liable for any taxes

accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

**SECTION NINE. Total amount collected to be remitted.**

No profit shall accrue to any person because of the collection of the tax authorized under this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be more than the amount for which a consumer would be liable by the application of the levy of three percent (3%) for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

**SECTION TEN. Tax return and payment.**

Unless otherwise provided herein, the tax authorized by this ordinance shall be due and payable in monthly installments on or before the fifteenth (15th) day of the calendar month next succeeding the month in which the tax accrued; provided that the credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the thirty (30) day payment period set forth in SECTION SIX of this ordinance, whichever shall first occur. The hotel operator shall, on or before the fifteenth (15th) day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the taxing authority. Such form shall include all information necessary for the computation, collection, and subsequent distribution of the tax as the taxing authority may require. A remittance for the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.

**SECTION ELEVEN. Keeping and preserving of records.**

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period or not less than three (3) years, unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

**SECTION TWELVE. Liability of officers.**

If the taxpayer is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly, and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by this ordinance may be enforced against such officers as against the association or corporation which they represent.

**SECTION THIRTEEN. Proceeds of tax; application of proceeds.**

(a) *Application of proceeds.* The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of this municipality and, after appropriation thereof, shall be expended only as provided in subsections (b) and (c) of this section.

(b) *Required expenditures.* At least fifty percent (50) of the net revenue receivable during the fiscal year by this municipality pursuant to this ordinance shall be expended in the following manner for the promotion of conventions and tourism:

1. If a convention and visitor's bureau is located within this municipality, the governing body of this municipality shall appropriate the percentage required by this subsection to that bureau. If a convention and visitor's bureau is not located within the municipality, then the percentage appropriation required by this subsection shall be appropriated as follows:

(i) Any hotel located within this municipality, may apply to this municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to this municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications, and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent (75%) of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection; provided, that prior to appropriating any monies to such hotel this municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such monies.

(ii) If there is more than one convention and visitor's bureau located within this municipality, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.

(iii) The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which this municipality is located.

(c) *Permissible expenditures.* After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenue receivable during the fiscal year by this municipality, pursuant to this ordinance may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;

(2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;

(3) The promotion of conventions;

(4) The construction, operation or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition);

- (5) The promotion of the arts;
- (6) Historic sites; or
- (7) Beautification projects.

(d) Definitions. For purposes of this section, the following terms are defined:

(1) *Convention and visitors bureau and visitor's and convention bureau.*

"Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable and either shall mean a non-stock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the municipality, county or region in which such convention and visitor's bureau or visitor's and convention bureau is located or engaged in business within.

(2) *Convention Center.* "Convention center" means a convention facility owned by the state, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourist and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

(3) *Fiscal Year.* "Fiscal year" means the year beginning the first (1st) day of July and ending the thirtieth (30th) day of June of the next calendar year.

(4) *Net Proceeds.* "Net proceeds" means the gross amount of tax collections less the amount of tax lawfully refunded.

(5) *Promotion of the arts.* "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals, and plays.

(6) *Recreational facilities.* "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.

(7) *Region.* "Region" means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor's bureau to promote those counties.

(8) *Regional travel council.* "Regional travel council" means a non-stock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences, and visitors to the region of this state served by the regional travel council.

(9) *Historic site.* "Historic site" means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open from time to time to accommodate visitors (1985, c. 96; 1989, c. 45; 1991, c. 161; 1992, c. 202.)

#### **SECTION 14. Criminal Penalties.**

(a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to be made by this ordinance, or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud the taxing authority, or to willfully evade the payment of the tax, or any part thereof, or for any person to willfully aid or ab3et another in any attempt to evade the payment of the tax, or any part thereof; or for any officer, partner or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this ordinance, with the intent to evade the payment of this tax.

(b) Any person willfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned for a period of not more than thirty (30) days, or both fined and imprisoned.

(c) For purpose of this section, the term:

(1) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this ordinance, in respect of which the violation occurs; provided that the mere failure to perform any act shall not be a willful violation under this ordinance. A willful violation of this ordinance requires that the defendant have had knowledge of a notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.

(2) "Evade" means to commit any act willfully and fraudulently with the intent of depriving the municipality payment of any tax which there is a known legal duty to pay.

(3) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such presentation or concealment be relied upon the municipality.

#### **SECTION FIFTEEN. Repeal of previous ordinance.**

ORDINANCE NO. 16 IS HEREBY REPEALED.

Passed by the City Council this 28th day of June, 2005.

Signed by Jack Bish  
Mayor

ATTEST:

Signed by Mary E. Kramer  
City Clerk