

ORDINANCE GUIDANCE

CITY/COUNTY/CONSOLIDATED GOVERNMENT ADOPTING A HOTEL-MOTEL EXCISE TAX OF 6%, 7%, OR 8% UNDER O.C.G.A. § 48-13-51(b).

Local governments wishing to adopt a Hotel-Motel Excise Tax (HMT) at a rate of 6, 7, or 8 percent must do so under authorization paragraph O.C.G.A. § 48-13-51(b). This authorization generally follows a three- step process.

- 1) An initial resolution from the city council/county commission requesting the local legislative delegation introduce the local act. The resolution should specify the subsequent tax rate, identify the project or projects or tourism product development purposes, and specify the allocation of proceeds.*
- 2) Local legislation passed by both the House of Representatives and the Senate and signed by the Governor. (Sample available on website)*
- 3) An ordinance adopted by council/commission adopting the new tax. The ordinance should specify the authorization paragraph under which the jurisdiction is imposing the tax, the specific rate of taxation being imposed, and the effective date of the tax.*

This ordinance guidance is provided as a courtesy by the Department of Community Affairs (DCA) to provide basic information on the key components necessary in the adoption of a Hotel-Motel Excise Tax under O.C.G.A. § 48-13-51(b).

DCA staff is available for consultation or clarification on certain issues surrounding the HMT, but this guidance is not a legal document or assurance of legal protection. Ultimate legal opinion should always stem from the city/county attorney. This document is intended to serve as a guide and is neither legal advice nor a directive from DCA.

Jurisdictions may find additional sections appropriate, addressing concerns such as the process for transmission of funds, record-keeping and document retention, penalties for non-compliance, codified designation of the jurisdiction's destination marketing organization, designation of tourism product development projects, short term rental regulations and others.

Upon adoption, a copy of the ordinance signed by the chief elected official and the city or county clerk should be forwarded to the DCA Office of Research at Research@dca.ga.gov.

If you have any questions, concerns, or needs surrounding the HMT, please contact the DCA Office of Research at Research@dca.ga.gov.

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Section I: Ordinance Preamble, Name and Citation

- The preamble explains the purpose of the ordinance and the objectives sought to be accomplished by it. This may include “whereas” statements listing the requisite characteristics or legal citations necessary for implementing the tax.
- The title can be named anything your government chooses; common examples are:
 - Hotel-Motel Excise Tax Ordinance of _____
 - _____ Excise Tax on Rooms Lodging and Accommodations
 - _____, Georgia Lodging Tax Ordinance
- Identify which section of the O.C.G.A. your government is citing as authorization to collect the tax.
 - Be specific, avoiding "O.C.G.A. § 48-13-50 et seq."
 - Title 48, Chapter 13, Article 3, Section 51(b).

Section II: Intent, Purpose, and Authorization to Levy Excise Tax

- The intent of this ordinance is to levy an excise tax on rooms, lodgings, and accommodations to provide additional funding for the promotion of tourism, conventions, and trade shows in the City or County.
- The purpose of this ordinance is to enact an excise tax upon the furnishing for value to the public of any room or rooms, lodgings or accommodations facilitated or furnished by an innkeeper.
- This excise tax shall be imposed under the authorization of a local act of the Georgia General Assembly pursuant to O.C.G.A. § 48-13-51(b)

Section III: Definitions

The following terms are widely used in Hotel-Motel Excise Tax statute or are specifically defined in to O.C.G.A. § 48-13-50.2. This is not an exhaustive or required list, the inclusion of certain definitions in the ordinance is at the discretion of the City or County attorney.

- (a) **Destination Marketing Organization:** a private sector nonprofit organization or other private entity which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit their destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed. O.C.G.A. § 48-13-50.2(1)
- (b) **Due Date:** The twentieth day after the close of the preceding calendar month. *The governing authority imposing the tax may provide by resolution or ordinance for quarterly or annual returns.*
- (c) **Estimated Tax Liability:** An innkeeper's tax liability under this article, adjusted to account for any subsequent change in the rate of tax imposed under this article or any substantial change in circumstances due to damage to the premises, based on his or her average monthly payments

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for the last fiscal year.

- (d) **Hotel:** Includes any hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which room or rooms, lodgings, or accommodations are regularly furnished for value and shall apply to the furnishing for value of any room, lodging, or accommodation.
- (e) **Innkeeper:** (A) Any person that furnishes for value to the public any room or rooms, lodgings, or accommodations in a county or municipality and that is licensed by, or required to pay business or occupation taxes to, such municipality or county for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which room or rooms, lodgings, or accommodations are regularly furnished for value; or (B) A dealer as defined in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 that is required to collect and remit the tax imposed by Article 1 of Chapter 8 of this title for acting as a marketplace facilitator as such term is defined in paragraph (18.1) of Code Section 48-8-2 for facilitating the furnishing for value to the public any room or rooms, lodgings, or accommodations on behalf of another person. O.C.G.A. § 48-13-50.2(2)
- (f) **Monthly Period:** Any calendar month of any year.
- (g) **Occupancy:** The use or possession, or the right to use or possession, of any room or apartment in a hotel or motel, or the right to use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or apartment.
- (h) **Occupant:** Any person (or persons utilizing as a single unit) who, for a consideration, uses, possesses, or has the right to use or possess, any room or hotel or motel under any lease, concession, permit, right of access, license, agreement or otherwise.
- (i) **Permanent Resident:** Any occupant who as of a given date shall have occupied, or has or shall have the right of occupancy, of any guest room in a hotel for more than 30 (thirty) consecutive days.
- (j) **Person:** An individual, firm partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust receiver, trustee, syndicate, business entity, or any other group or combination acting as a unit, to include the plural as well as the singular number, excepting, however, the United States of America, the State of Georgia, and any political subdivision of either thereof upon which the governing authority is without power to impose the tax herein provided.
- (k) **Private Sector Non-Profit Organization:** A chamber of commerce, a convention and visitors bureau, a regional travel association, or any other private group organized for similar purposes which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986; provided, however, that a county or municipality which has prior to April 1, 1990, contracted for a required expenditure under this Code section with a private group which is exempt from federal income tax under provisions of Section 501(c) of the Internal Revenue Code other than Section 501(c)(6) may continue to contract for required expenditures with such a private group. O.C.G.A. § 48-13-50.2(3)
- (l) **Promoting Tourism, Conventions, and Trade Shows:** Planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or

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trade shows. O.C.G.A. § 48-13-50.2(4)

- (m) **State Authority:** An authority created by state law which serves a state-wide function, including, but not limited to, the Georgia Agricultural Exposition Authority, Georgia Aviation Authority, Georgia Building Authority, Georgia Development Authority, Georgia Environmental Finance Authority, Jekyll Island Authority, Lake Allatoona Preservation Authority, Georgia Medical Center Authority, Georgia Ports Authority, Georgia Regional Transportation Authority, State Road and Tollway Authority, Sports Hall of Fame Authority, Georgia Technology Authority, and Georgia World Congress Center Authority, but shall not mean an authority created for support of a local government or a local purpose or function and shall not include authorities such as area planning and development commissions and any organizational entities they may create, regional commissions and any organizational entities they may create, or local water and sewer authorities. O.C.G.A. § 48-13-50.2(5)
- (n) **Tourism Product Development:** means the expenditure of funds for the creation or expansion of physical attractions which are available and open to the public and which improve destination appeal to visitors, support visitors' experience, and are used by visitors. Such expenditures may include capital costs and operating expenses. Tourism product development may include: (A) Lodging for the public for no longer than 30 consecutive days to the same customer; (B) Overnight or short-term sites for recreational vehicles, trailers, campers, or tents; (C) Meeting, convention, exhibit, and public assembly facilities; (D) Sports stadiums, arenas, and complexes; (E) Golf courses associated with a resort development that are open to the general public on a contract or fee basis; (F) Racing facilities, including dragstrips, motorcycle racetracks, and auto or stock car racetracks or speedways; (G) Amusement centers, amusement parks, theme parks, or amusement piers; (H) Hunting preserves, trapping preserves, or fishing preserves or lakes; (I) Visitor information and welcome centers; (J) Wayfinding signage; (K) Permanent, nonmigrating carnivals or fairs; (L) Airplanes, helicopters, buses, vans, or boats for excursions or sightseeing; (M) Boat rentals, boat party fishing services, rowboat or canoe rentals, horse shows, natural wonder attractions, picnic grounds, river-rafting services, scenic railroads for amusement, aerial tramways, rodeos, water slides, or wave pools; (N) Museums, planetariums, art galleries, botanical gardens, aquariums, or zoological gardens; (O) Parks, trails, and other recreational facilities; or (P) Performing arts facilities. O.C.G.A. § 48-13-50.2(6)

Section IV: Tax Rate

- This authorization paragraph allows for an excise tax at a rate not to exceed 8 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations facilitated or furnished by an innkeeper.
- This section should specify a rate of either 6, 7, or 8 percent.

Section V: Effective Date

- Any action by a local governing authority to impose or change the rate of the tax authorized under this article shall become effective no sooner than the first day of the second month

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following its action by the local governing authority. O.C.G.A. § 48-13-51(g)(1)

- This section should state the effective date of the new rate or tax complying with the restriction in subsection (g).

Section VI: Exemptions

The tax imposed by this ordinance shall not apply to:

- Charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty; O.C.G.A. § 48-13-51(h)(1)
- The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge; O.C.G.A. § 48-13-51(h)(2)
- Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this paragraph. For purpose of the exemption provided under this paragraph, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; O.C.G.A. § 48-13-51(h)(3)
- Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy. O.C.G.A. § 48-13-51(h)(4)

Section VII: Use of Revenue

The ordinance should either include the minimum statutory restrictions below, or state that the revenue will be allocated in accordance with the requirements in O.C.G.A. § 48-13-51(b)(5) and O.C.G.A. § 48-13-51(b)(6).

- In each fiscal year during which a tax is collected under paragraph (2) or (3) of this subsection, an amount equal to not less than 50 percent of the total amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent shall be expended for promoting tourism, conventions, and trade shows by the destination marketing organization designated by the county or municipality levying the tax; O.C.G.A. § 48-13-51(b)(5)(A).
- The remaining amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent which are not otherwise expended under subparagraph (A) of this paragraph shall be expended for tourism product development. O.C.G.A. § 48-13-51(b)(5)(B).
- A county or municipality levying a tax pursuant to this subsection shall expend an amount equal to the amount of total taxes collected under this subsection which would have been collected at

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a rate of 5 percent in accordance with the provisions of paragraph (3) of subsection (a) of this Code section. O.C.G.A. § 48-13-51(b)(6)

- A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph (3)) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended and if such facility was substantially completed and in operation prior to December 31, 1993; or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes (C) and (D) may be so expended in any otherwise lawful manner. O.C.G.A. § 48-13-51(a)(3)

The Ordinance should then be signed by all necessary parties, dated and provided to DCA before the effective date to begin collecting the Tax.