

ORDINANCE O-22-15

AN ORDINANCE AMENDING AND RESTATING TITLE 7, CHAPTER 10  
OF THE CODE OF ORDINANCES  
(HOTEL AND MOTEL ROOM TAX)

Introduced by Mayor Merkes.

The Common Council of the City of Menasha does ordain as follows:

WHEREAS, §66.0615 of the Wisconsin Statutes authorizes the governing body of a municipality to adopt an ordinance imposing a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators or other persons furnishing accommodations which are available to the public (“Room Tax”); and

WHEREAS, the geographic area encompassing the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Town of Neenah”), the TOWN OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Town of Menasha”), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Sherwood”), (collectively, “Municipalities”), is hereby confirmed to be a single destination as perceived by the traveling public, and, therefore, a Tourism Zone, as that term is used in §66.0615 of the Wisconsin Statutes (“Room Tax Act”) (which single destination is referred to as the “Fox Cities Tourism Zone”); and

WHEREAS, the City of Menasha previously enacted an ordinance imposing a Room Tax and is desirous of amending and restating its Hotel and Motel Room Tax Ordinance; and

WHEREAS, the City of Menasha desires to impose an additional Room Tax, in the amount of three percent (3%) to be pledged as payment on bonds to be issued as partial funding for the construction of a new Fox Cities Exhibition Center; and

WHEREAS, the Common Council finds that the best interests of the City are served by passing this Ordinance.

SECTION 1: Title 7, Chapter 10, of the Code of Ordinances of the City of Menasha, Wisconsin is hereby deleted and restated as follows:

## **Title 7 – Licensing and Regulation**

### **CHAPTER 10**

#### **Hotel and Motel Room Tax**

##### **SEC. 7-10-1 DEFINITIONS.**

In addition to those terms defined in this Section, the terms used in this Ordinance shall have the definition, if any, ascribed to them in §66.0615 of the Wisconsin Statutes.

- (a) “Pledge Agreement” shall mean that Amended and Restated Pledge and Security Agreement dated May 1, 2012 by and between the City of Appleton, Wisconsin; the City of Kaukauna, Wisconsin; the City of Neenah, Wisconsin; the Village of Kimberly, Wisconsin; the Village of Little Chute, Wisconsin; the Town of Grand Chute, Wisconsin; the Town of Neenah, Wisconsin; the Town of Menasha, Wisconsin, the Fox Cities Area Room Tax Commission and Associated Trust Company.
- (b) “ARA” shall mean the Redevelopment Authority of the City of Appleton, Wisconsin, a Wisconsin body politic and corporate.
- (c) “CVB” shall mean the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin corporation.
- (d) “Exhibition Center Bonds” shall mean bonds issued or to be issued by the ARA as partial funding for the construction of a new Fox Cities Exhibition Center, or any refinance thereof, as well as for any other purpose authorized under that Exhibition Center Cooperation Agreement between the Municipalities located within the Fox Cities Tourism Zone, the ARA and the Fox Cities Room Tax Commission, dated as of **[City Clerk Authorized to insert date]**, 2015.
- (e) “Fox Cities Tourism Zone” shall mean that geographic area encompassing the City of Appleton, Wisconsin; the City of Kaukauna, Wisconsin; the City of

Neenah, Wisconsin, the Village of Kimberly, Wisconsin, the Village of Little Chute, Wisconsin; the Town of Grand Chute, Wisconsin; the Town of Neenah, Wisconsin, the Town of Menasha, Wisconsin; the City of Menasha, Wisconsin and the Village of Sherwood, Wisconsin.

- (f) “Fox Cities Room Tax Commission” shall mean the Room Tax Commission created by the Municipalities within the Fox Cities Tourism Zone through that Amended and Restated Room Tax Commission Agreement dated **[City Clerk Authorized to insert date]**, 2015, in order to coordinate tourism promotion and tourism development within the Fox Cities Tourism Zone using the proceeds of Room Taxes imposed under this Ordinance, and having on its Board certain representatives of the Municipalities and certain representatives of the Wisconsin hotel and motel industry.
- (g) “Hotel or Motel” shall mean a building or group of buildings in which the public may obtain accommodations for a consideration including, without limitation, such establishments as inns, motels, hotels, tourist homes, tourist houses or courts, bed and breakfasts, rooming houses, summer camps, apartment hotels, resort lodges, and cabins, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanitariums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual.
- (h) “PAC Bonds” shall mean those bonds issued by the ARA to partially fund construction of the Fox Cities Performing Arts Center.
- (i) “Room Tax” shall mean a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators or other persons furnishing accommodations which are available to the public, irrespective of whether membership is required for use of the accommodations, pursuant to the Room Tax Act.
- (j) “Room Tax Act” shall mean §66.0615 of the Wisconsin Statutes, as amended from time to time.

**SEC. 7-10-2 IMPOSITION OF ROOM TAX.**

- (a) Pursuant to the Room Tax Act, a room tax is hereby imposed upon the privilege of furnishing, at retail (except sales for resale) rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public (collectively, “Operators”), irrespective of whether membership is required for use of the accommodations

within the City of Menasha. Operators shall remit all collected Room Tax revenues to the City Treasurer in accordance with the requirements of this Ordinance and the Room Tax Act. The proceeds shall then be paid to the Fox Cities Room Tax Commission or its designees or assigns, unless otherwise indicated herein, to be used for purposes of coordinating tourism promotion and tourism development within the Fox Cities Tourism Zone. A Room Tax is hereby imposed at the rate of ten percent (10%) within the City of Menasha to be allocated as follows:

- (1) Three percent (3%) shall be imposed and allocated toward the support of the CVB, to be used for the promotion of the Fox Cities Tourism Zone as a tourism destination (“CVB Room Tax”), except that:
  - (i) The City of Menasha may retain five percent (5%) of the revenues of this CVB Room Tax for general tourism support and development in the City of Menasha in accordance with the requirements of the Room Tax Act.
- (2) Two percent (2%) shall be imposed and allocated toward payment of debt service on the PAC bonds in accordance with that Cooperation Agreement dated June 1, 2000. The rate imposed as set forth in this subsection (2) shall be known as the “PAC Room Tax”. Upon full payment and satisfaction of the PAC Bonds, the PAC Room Tax shall ultimately be reallocated toward the development and support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone as more fully set forth in Section (c) of this Ordinance.
- (3) Three percent (3%) shall be imposed and allocated toward payment of debt service on the Exhibition Center Bonds in accordance with that Exhibition Center Cooperation Agreement dated **[City Clerk Authorized to insert date.]**, 2015 to which the City is a party (“Exhibition Center Room Tax”). The Exhibition Center Room Tax shall sunset and expire upon full payment and satisfaction of the Exhibition Center Bonds at a date to be determined. Upon full satisfaction of the Exhibition Center Bonds, the Room Tax shall be reduced by three percent (3%), with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. At the time that the Exhibition Center Bonds are fully satisfied, there may be an excess of Exhibition Center Room Tax proceeds collected above that amount needed to satisfy the Exhibition Center Bonds. In such an event, those excess funds shall be reallocated to the Tourism Development Fund as

that term is referenced and defined in the Exhibition Center Cooperation Agreement.

(4) One percent (1%) (“Municipal Room Tax”) shall be retained by the City of Menasha to be used for general tourism support and development in the Fox Cities Tourism Zone in accordance with the requirements of the Room Tax Act.

(5) One percent (1%) shall be imposed and allocated toward the support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone (“Tourism Facilities Room Tax”). The proceeds of the Tourism Facilities Room Tax shall be remitted to CVB to be held and administered under as part of the Tourism Development Fund, as that term is referenced and defined in the Exhibition Center Cooperation Agreement.

(b) **PROCEEDS OF PAC ROOM TAX.** Notwithstanding anything in this Ordinance to the contrary, the proceeds of the PAC Room Tax shall continue to be directed to the Trustee under the Pledge Agreement until the PAC Bonds have been paid in full. Notwithstanding the foregoing, the City of Menasha may arrange for the proceeds of the PAC Room Tax to be paid to any other Municipality in the Fox Cities Tourism Zone under an express agreement with such Municipality that the proceeds shall ultimately be paid to the Trustee as provided herein. Following full payment and satisfaction of the PAC Bonds, the proceeds generated from the PAC Room Tax for the calendar quarter in which the PAC Bonds were fully paid and satisfied shall be directed toward payment of debt service on the Exhibition Center Bonds, capitalized interest payments on the Exhibition Center Bonds or may be deposited into reserve and stabilization funds associated with the issuance of the Exhibition Center Bonds. Commencing on the first day of the next calendar quarter, all proceeds from the PAC Room Tax shall be directed toward the support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone.

(c) **EXPIRATION OF EXHIBITION CENTER ROOM TAX.** The Exhibition Center Room Tax shall expire upon full payment of the Exhibition Center Bonds; provided that Operators may not discontinue collection of the Exhibition Center Room Tax until the City of Menasha provides notice that the Room Tax allocated to the Exhibition Center has been terminated by operation of this Ordinance and the Exhibition Center Cooperation Agreement.

### **SEC. 7-10-3 COLLECTION AND ADMINISTRATION OF ROOM TAX.**

- (a) This Ordinance shall be administered by the City Treasurer. The tax imposed by this Ordinance shall be payable quarterly and shall be due on the last day of the month next succeeding the calendar quarter in which it was imposed. A return shall be filed with the City Treasurer by all Operators on or before the same date on which such tax is due and payable. Such return shall show the gross room receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period and such other information as the City of Menasha deems necessary. Every person required to file such quarterly return shall, with the first return, elect to file an annual calendar year or fiscal year return. Such annual return shall be filed within ninety (90) days of the close of each such calendar or fiscal year. The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns, and shall contain certain such additional information as the City of Menasha requires. Such annual returns shall be signed by the person required to file a return or the person's duly authorized agent, but need not be verified by oath. The City of Menasha may, for good cause, extend the time of filing any return, but in no event longer than one (1) month from the filing date.
- (b) **PERMIT REQUIRED.** Every Operator under this Ordinance shall file with the City Treasurer an application for a permit for each place of business that is required to collect Room Tax hereunder. Every application for a permit shall be made upon a form prescribed by the City of Menasha and shall set forth the name under which the applicant transacts or intends to transact business, the location of place of business, and such other information as the City of Menasha requires. The application shall be signed by the owner if a sole proprietor and, if not a sole proprietor, by the person authorized to act on behalf of such sellers. At the time of making an application, the applicant shall pay the City of Menasha an initial fee of twenty dollars (\$20.00) for each permit. A permit issued hereunder is non-transferable.

### **SEC. 7-10-4 ENFORCEMENT.**

The City of Menasha shall enforce this Ordinance in accordance with the Room Tax Act.

- (a) **PENALTY FOR VIOLATIONS.** In addition to the Schedule of Forfeiture set forth in subsection (c) herein, any Operator in violation of the terms of this Ordinance by failing to obtain and maintain a permit, when such permit is required, shall be subject to a penalty as set forth in Section 1-1-7 of the

Menasha Code of Ordinances for each violation. Each room or unit separately rented or offered for rent, and each day of such rental or offer for rental of such unit shall be a separate violation. In addition, injunctive relief is hereby authorized to discontinue any violation of this Ordinance. Any party deemed to have violated any of the provisions of this Ordinance shall be obligated to pay the costs of prosecution, in addition to actual attorney fees expended in the course of said enforcement. The City of Menasha may revoke or suspend any permit issued hereunder for failure to comply with the provisions hereof.

- (b) **LIABILITY FOR TAX ON SALE OR TRANSFER OF BUSINESS.** If any Operator liable for any amount of tax under this Ordinance sells or transfers all or substantially all of its interest in the hotel, motel or other accommodation, its successors or assigns shall withhold sufficient amounts from the purchase price to cover the amount of tax liability until the Operator produces a receipt from the City Treasurer that its liability has been paid in full or a certificate stating that no amount is due. If a successor subject to the tax imposed by this Ordinance fails to withhold such amount from the purchase price as required, the successor shall become personally liable for payment of the amount required to be withheld by it.
- (c) **SCHEDULE OF FORFEITURE.** In addition to paying the Room Taxes due hereunder, each Operator shall be required to forfeit an amount equal to twenty-five percent (25%) of the Room Tax due from the Operator to the City of Menasha for the previous year or Five Thousand Dollars (\$5,000), whichever is less, for a failure to pay the Room Tax due hereunder.
- (d) **CONFIDENTIALITY OF INFORMATION.** To the extent permitted by law, the information provided to the City of Menasha under §66.0615(2) of the Wisconsin Statutes shall remain confidential; provided, however, that the City of Menasha or any employee thereof may use such information in the discharge of duties imposed by law or of the duties of his or her office or by order of a court. Persons violating the provisions of this subsection may be required to forfeit not less than \$100 nor more than \$500.

**SEC. 7-10-5 SUPERSEDE CONFLICTING ORDINANCES; SEVERABILITY.**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed to the extent of such conflict. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

SECTION 2: This Ordinance shall take effect on January 1, 2016 and publication as provided by law.

Passed and approved this 23<sup>rd</sup> day of November, 2015.

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Donald Merkes, Mayor

ATTEST:

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Deborah A. Galeazzi, City Clerk