

**SHAMROCK TOWNSHIP
AITKIN COUNTY, MINNESOTA**

Ordinance No. 2017-1

AN ORDINANCE IMPOSING A TAX ON LODGING

The Board of Supervisors of the Town of Shamrock ordains:

Section 1. Purpose and Authority.

Subd. 1. **Authority.** In accordance with Minnesota Statutes, section 469.190, the Minnesota Legislature and the electors of Shamrock Township at the annual meeting of March 2017, have authorized the Town Board of Shamrock Township to impose a tax of up to three percent (3%) on the gross receipts from the furnishing for consideration of lodging at a hotel, motel, rooming house, tourist court, or resort, other than the renting or leasing of it for a continuous period of thirty (30) days or more.

Subd. 2. **Purpose.** The Town Board finds that imposing such a tax will provide additional funding for a convention and tourism bureau to promote the Town and general area as a tourist and convention destination.

Section 2. Definitions. The following words and terms when used in this ordinance shall have the following meanings, unless the context clearly indicates otherwise.

Subd. 1. **Lodger.** "Lodger" means the person obtaining lodging from an operator.

Subd. 2. **Lodging.** "Lodging" means the furnishing for a consideration of lodging by a hotel, motel, or rooming house, except where such lodging shall be for a continuous period of thirty (30) days or more to the same lodger(s). The furnishing of rooms by religious, educational, or nonprofit organizations shall not constitute "lodging" for purposes of this ordinance.

Subd. 3. **Operator.** "Operator" means a person who provides lodging to others, or any officer, agent, or employee of such person.

Subd. 4. **Ordinance.** "Ordinance" means this ordinance.

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

Subd. 6. **Rent.** "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 furnishing lodging other than the room charge itself.

Subd. 7. **Tax.** Tax” or “lodging tax” means a three percent (3%) compulsory contribution to the Town revenue, levied by the Town on the gross receipts from the furnishing for consideration of lodging in the Town.

Subd. 8. **Town.** Town” means Shamrock Township, Aitkin County, Minnesota.

Subd. 9. **Town Clerk.** “Town Clerk” means the Town Clerk of Shamrock Township or the Town Clerk’s designee.

Section 3. Imposition of Tax. Pursuant to Minnesota Statutes, section 469.190, there is hereby imposed a tax of three percent (3%) on the rent charged by an operator for providing lodging to any person. The tax collected by the operator shall be a debt owed by the operator to the Town and shall be extinguished only by payment to the Town. In no case shall the tax imposed by this ordinance upon an operator exceed the amount of tax which the operator is authorized and required by this ordinance to collect from a lodger.

Section 4. Collections. Each operator shall collect the tax imposed by this ordinance at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the Town. 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.

Section 5. Exceptions. The tax shall not apply in any of the situations described in this section.

Subd. 1. **Foreign Government.** 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.

Subd. 2. **Legal Exemptions.** An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the Town to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the Town. All such claims shall be forwarded to the Town when the returns and collections are submitted as required by this chapter.

Section 6. 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 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.

Section 7. Payment and Returns. The operator shall pay the tax to the Town in accordance with the requirements of this section.

Subd. 1. **Timing.** The tax imposed by this ordinance shall be paid by the operator to the Town monthly not later than thirty (30) days after the end of the month in which the taxes were collected.

Subd. 2. **Return Form.** At the time of payment the operator shall submit a return upon such forms and containing such information as the Town Clerk 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; and
- (e) The amount of uncollectable rental charges subject to the lodging tax.

Subd. 3. **Offset.** The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this ordinance previously paid as a result of any transaction the consideration for which became uncollectable during such reporting period, but only in proportion to the portion of such consideration which became uncollectable.

Section 8. Examination of Return, Adjustments, Notices, and Demands. The Town Clerk may rely upon the Minnesota state sales and use tax return filed by the operator with the state in determining the accuracy of a return filed under this ordinance. The Town Clerk shall, after a return is filed pursuant to this ordinance, 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 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 Town 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 Town within ten (10) days after determination of such refund.

Section 9. Refunds. Any person may apply to the Town Clerk 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 a refund shall be considered unless filed within one (1) year after such tax was paid, or within one (1) year from the filing of the return, whichever period is the longer. The Town Clerk 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. If such claim is allowed in whole or in part, the Town Clerk 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 Town Clerk to the claimant.

Section 10. Failure to File a Return.

Subd. 1. **Failure to File.** If any operator required by this ordinance to file a return fails 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 such return or corrected return within five (5) days of receipt of such written notice and shall at the same time pay any tax due on the basis thereof. If such person shall fail to file such return or corrected return, the Town Clerk shall make a return or corrected return, for such person from such knowledge and information as the Town Clerk 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 such return) shall be paid upon within five (5) days of the receipt of written notice and demand for such payment. Any such return or assessment made by the Town Clerk shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 2. **Collecting Unpaid Amounts.** If an operator fails to pay a tax and/or penalty imposed hereunder within thirty (30) days after it is required to be paid, the tax and/or penalty may be specially assessed against the real property on which the lodging establishment is located in the same manner as a special assessment for other unpaid Town charges. As an alternative to a special assessment, if any portion of a tax imposed by this ordinance, including interest and penalties thereon, is not paid within thirty (30) days after it is required to be paid, the Town may certify the unpaid amount, together with the costs of collection, to the county auditor under Minnesota Statutes, section 366.012 for collection together with the taxes imposed on the property containing the lodging structure. Such amounts are declared unpaid service charges for the purposes of collection. Nothing in this section shall limit the Town's authority to institute any legal actions as may be necessary to recover the amount due plus attorneys' fees, costs and disbursements incurred in any action.

Subd. 3. **Extension.** Upon a showing of good cause, the Town Clerk may grant an operator one thirty (30) day extension of time within which to file a return and make payment of taxes as required by this ordinance; provided, that interest during such period of extension shall be added to the taxes due at the rate of ten percent (10%) per annum.

Section 11. Penalties. 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. The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate specified in Minnesota Statutes, section 270C.40 per annum from the time such tax should have been paid. Any interest and penalty shall be added to the tax and be collected as part of thereof.

Section 12. Administration of Tax. The Town Clerk shall, and is delegated the authority as may be needed to, administer and enforce the assessment and collection of the taxes imposed by this ordinance. The Town Clerk shall cause to be prepared blank forms for the returns and other documents required by this ordinance, and shall distribute the same to those providing lodging in the Town and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required under this ordinance.

Section 13. Examine Records. The Town Clerk and those persons acting on behalf of the Town Clerk authorized in writing by the Town Clerk 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 such operator is directed and required to give to the said Town Clerk, or to the Town Clerk's duly authorized agent or employee, the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

Section 14. Violations. Any person who does any of the following shall be guilty of a misdemeanor:

- (a) Willfully fail to make a return required by this ordinance;

- (b) Fail to pay the tax after written demand for payment;
- (c) Fail to remit the taxes collected or any penalty or interest imposed by this ordinance after written demand for such payment;
- (d) Refuse to permit the Town Clerk or any duly authorized agents or employees to examine the books, records, and papers under his or her control; or
- (e) Willfully make any incomplete, false, or fraudulent return shall.

Section 15. Use of Proceeds. Five percent (5%) of the proceeds obtained from the collection of taxes pursuant to this ordinance shall be paid to the Town Clerk for the costs of collection. Ninety-five percent (95%) of the proceeds obtained from the collection of taxes pursuant to this ordinance shall be used in accordance with Minnesota Statutes, section 469.190, subdivision 3, as may be amended, to fund a local convention or tourism bureau for the purpose of marketing and promoting the Town as a tourist or convention destination. The Town Board shall, by separate action, select the local convention or tourism bureau to receive the proceeds of the tax. The Town Board may change its selection at any time, provided the selection of a new local convention or tourism bureau is consistent with law.

Section 16. Appeals. An operator may appeal to the Town Board a notice, order, or determination of the Town Clerk issued regarding the lodging tax as provided in this section.

- Subd. 1. **Petition.** Any operator aggrieved by any notice, order, or determination made by the Town Clerk under this ordinance may file a petition for review of such 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.
- Subd. 2. **Appeal Period.** The petition for review shall be filed with the Town Clerk 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.
- Subd. 3. **Hearing.** Upon receipt of the petition, the Town Clerk, or his or her designee, shall forward the petition to the Town Board to 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. At the hearing, the Town Board shall give the petitioner an opportunity to be heard and to show cause why the notice, order, or determination should be modified or withdrawn. The Town Board shall make the final decision regarding the petition and shall issue its decision in writing. The Town Clerk shall provide the petitioner a copy of the decision.

Section 17. Effective Date. This ordinance shall take effect on the first day of publication after adoption and the tax imposed hereunder shall commence on April 1, 2017.

Adopted this 23rd day of March, 2017.

SHAMROCK TOWNSHIP

Allen Eld, Town Chairperson

Attest: _____
Candace Kral, Town Clerk

**ORDINANCE APPROVED ON A MOTION AT THE MARCH 23, 2017, REGULAR
BOARD MEETING**