

**COMMON COUNCIL  
OF THE  
CITY OF APPLETON, WISCONSIN**

**April 18, 2018**

**Ordinance No. 40-18**

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**Amended and Restated Ordinance Imposing a Room Tax  
on the Privilege of Furnishing, at Retail, Except Sales for Resale,  
Rooms or Lodging to Transients**

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WHEREAS, the City of Appleton (the “**City**”) is a duly organized and existing city created under the provisions of the laws of the State of Wisconsin; and

WHEREAS, Section 66.0615 of the Wisconsin Statutes authorizes the governing body of a municipality to adopt an ordinance imposing a tax (the “**Room Tax**”) on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators, lodging marketplaces, owners of short-term rentals, and other persons furnishing accommodations that are available to the public; and

WHEREAS, the 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 Village of Fox Crossing, Wisconsin, the City of Menasha, Wisconsin, and the Village of Sherwood, Wisconsin (including any additional municipality in the same geographic area that may become a party to the Room Tax Commission Agreement described herein, collectively, the “**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 Section 66.0615 of the Wisconsin Statutes (the “**Room Tax Act**”), which single destination is referred to as the “**Fox Cities Tourism Zone**”; and

WHEREAS, on December 2, 2015 this Common Council previously enacted a room tax ordinance (the “**Prior Ordinance**”) imposing a 10% Room Tax comprising:

- (i) a 3% Room Tax collected for the support of the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin non-stock, nonprofit corporation, a 5% portion of which could be retained by the City for the purposes of the Municipal Room Tax (as defined below) (the “**CVB Room Tax**”);
- (ii) a 2% Room Tax collected for the payment of debt service on bonds issued by the Redevelopment Authority of the City of Appleton, Wisconsin, to partially fund construction of the Fox Cities Performing Arts Center (the “**PAC Bonds**”) and, upon payment in full of the PAC Bonds, to be reallocated for the purposes of the Tourism Facilities Room Tax (as defined below) (the “**PAC Room Tax**”);

- (iii) a 3% Room Tax collected for the direct or indirect payment of the costs of construction of the Fox Cities Exhibition Center or debt service on bonds issued to finance or refinance the Fox Cities Exhibition Center (the “**Exhibition Center Room Tax**”);
- (iv) a 1% Room Tax collected for general purposes, including, but not limited to tourism support and development in the City (the “**Municipal Room Tax**”); and
- (v) a 1% Room Tax collected for 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 (the “**Tourism Facilities Room Tax**”); and

WHEREAS, subsequent to the adoption of the Prior Ordinance, certain facts and assumptions contemplated and described in the Prior Ordinance have changed, including that the PAC Bonds have been paid in full and the PAC Room Tax has been reallocated to the purposes of the Tourism Facilities Room Tax, the Room Tax Act has been amended, and the Town of Menasha, Wisconsin, a municipality within the Fox Cities Tourism Zone, has been incorporated as the Village of Fox Crossing, Wisconsin; and

WHEREAS, the City desires (i) to clarify the allocation of the 10% Room Tax imposed in the Prior Ordinance by removing reference to the PAC Room Tax and reflecting that the Tourism Facilities Room Tax percentage is now 3%, (ii) to make conforming changes to the CVB Room Tax and Municipal Room Tax percentages to reflect the actual percentages each of the recipients are currently receiving, and (iii) to enter into a fiscal agency agreement pursuant to which all Room Tax would be paid to a fiscal agent and be allocated by the fiscal agent to the recipients of the Room Tax for the specific Room Tax purposes set forth in this Ordinance; and

WHEREAS, the City acknowledges that the Room Tax Act includes certain conditions on the imposition of Room Taxes, including a consideration of the populations of counties in which the Municipalities are located; and

WHEREAS, the Municipalities are located within Outagamie, Calumet, and/or Winnebago Counties, each of which has a population of less than 380,000 and none of which is located adjacent to a county with a population of more than 380,000; and

WHEREAS, the City has entered into an Amended and Restated Room Tax Commission and Tourism Zone Agreement with the other Municipalities, which created the Fox Cities Room Tax Commission in order to coordinate tourism promotion and tourism development within the Fox Cities Tourism Zone using the proceeds of Room Taxes; and

WHEREAS, by the adoption of this Ordinance, the City repeals and restates the Prior Ordinance to continue the imposition of the Room Tax uniformly with the room taxes imposed by the other Municipalities located within the Fox Cities Tourism Zone pursuant to the requirements of the Room Tax Act; and

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

NOW, THEREFORE, the Common Council of the City of Appleton, Wisconsin do ordain as follows:

1. **Recitals**. The above recitals are incorporated by reference herein and made a part hereof.
2. **Amendment and Restatement of Code Section**. [Chapter \_\_, Section \_\_\_\_] Chapter 18. Article III, Division 2 of the Municipal Code of the City of Appleton is hereby repealed and created in its entirety to read as follows:

## **DIVISION 2. HOTEL AND MOTEL ROOM TAX**

- (A) **Definitions**. In addition to the terms defined in this Section, the terms used in this Ordinance shall have the definitions, if any, set forth in the Room Tax Act (as defined below).
- (1) **“CVB”** shall mean the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin nonstock corporation, and its successors.
  - (2) **“Exhibition Center Bonds”** shall mean the Redevelopment Authority of the City of Appleton, Wisconsin Taxable Lease Revenue Bonds, Series 2018 (Fox Cities Exhibition Center Project), issued to finance or refinance the construction and related costs of the Fox Cities Exhibition Center, and any additional bonds issued to refinance said bonds.
  - (3) **“Fiscal Agent”** shall mean a financial institution acting in the capacity as an agent on behalf of the City for the receipt and allocation of the Room Taxes in accordance with this Ordinance.
  - (4) **“Fiscal Agency Agreement”** shall mean an agreement entered into by and among the Municipalities, the Room Tax Commission, and the Fiscal Agent that sets forth the duties of the Fiscal Agent with respect to the Room Taxes as described in this Ordinance.
  - (5) **“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 Village of Fox Crossing, Wisconsin; the City of Menasha, Wisconsin, the Village of Sherwood, Wisconsin, and that may in the future include any municipality that hereafter becomes a party to the Room Tax Commission Agreement.
  - (6) **“Operators”** shall mean hotelkeepers, motel operators, lodging marketplaces, owners of short-term rentals, and other persons furnishing accommodations that are available to the public, which are located in the City and are obligated to pay Room Taxes under this Ordinance.
  - (7) **“Pledge Agreement”** shall mean any pledge agreement entered into by the Municipalities and the Room Tax Commission, pursuant to which a portion

of the Room Tax is pledged to pay a particular project or purpose in furtherance of the purposes of the Room Tax set forth in this Ordinance, which includes the Exhibition Center Bonds and any Tourism Facilities Bonds.

- (8) “**Quarterly Payment Date**” shall mean each January 31, April 30, July 31, and October 31, each of which is the last day of the month next succeeding the end of a calendar quarter.
  - (9) “**Room Tax**” shall mean a tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by the Operators, pursuant to the Room Tax Act.
  - (10) “**Room Tax Act**” shall mean Section 66.0615 of the Wisconsin Statutes, as amended from time to time.
  - (11) “**Room Tax Commission**” shall mean the Fox Cities Room Tax Commission created by the Municipalities within the Fox Cities Tourism Zone pursuant to the Room Tax Commission Agreement in order to coordinate tourism promotion and tourism development within the Fox Cities Tourism Zone.
  - (12) “**Room Tax Commission Agreement**” shall mean the Amended and Restated Room Tax Commission Agreement, dated as of November 24, 2015 entered into by and among the Municipalities and the Room Tax Commission, as amended from time to time.
  - (13) “**Tourism Facilities Bonds**” shall mean any one or more series of bonds issued to finance or refinance the construction and related costs of projects undertaken by or on behalf of the Municipalities in furtherance of the Tourism Facilities Room Tax, and any additional bonds issued to refinance said bonds.
- (B) **Imposition of Room Tax.** Pursuant to the Room Tax Act, there is hereby imposed a 10% Room Tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients, by the Operators. Operators shall remit all Room Taxes to (i) the City’s Director of Finance or (ii) to a Fiscal Agent on behalf of the City pursuant to a Fiscal Agency Agreement in accordance with the requirements of this Ordinance and the Room Tax Act. Such 10% Room Tax shall be allocated as follows:
- (1) A 2.85% Room Tax 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 (the “**CVB Room Tax**”).
  - (2) A 3% Room Tax shall be imposed (subject to sunset as provided in subsection [(C)] hereof) and allocated toward payment of debt service on the Exhibition Center Bonds in accordance with a Pledge Agreement (the “**Exhibition Center Room Tax**”).

- (3) A 3% Room Tax 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, motel, or other lodging establishment within the Fox Cities Tourism Zone (the “**Tourism Facilities Room Tax**”).
- (4) A 1.15% Room Tax shall be imposed and retained by the City 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 (the “**Municipal Room Tax**”).

The City or its Fiscal Agent shall forward the Room Taxes it has received, to be used as described above, to the following parties: (i) the CVB Room Tax to the CVB, (ii) the Exhibition Center Room Tax as required under the related Pledge Agreement, (iii) the Municipal Room Tax to the City, and (iv) the Tourism Facilities Room Tax to the Room Tax Commission or its designees on its behalf (including the CVB), or as otherwise required under a Pledge Agreement.

- (C) **Expiration of Exhibition Center Room Tax.** The Exhibition Center Room Tax shall sunset and expire upon payment in full of all outstanding Exhibition Center Bonds and any related outstanding fees or expenses therefor, at which time the Room Tax shall be reduced by 3% with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. Notwithstanding the foregoing, Operators may not discontinue collection of the Exhibition Center Room Tax until the City provides notice that the Exhibition Center Room Tax has been terminated by operation of this Ordinance. After all outstanding Exhibition Center Bonds are paid in full, any excess Exhibition Center Room Tax revenues collected that are not needed to pay the Exhibition Center Bonds or any related outstanding fees or expenses shall be forwarded to the CVB and reallocated to the purposes of the Tourism Facilities Room Tax.
- (D) **Priority of Payment.** In the event any Operator fails to remit the entire Room Tax amounts due on any Quarterly Payment Date under this Ordinance, the City directs that the amounts actually received by the City (or its Fiscal Agent) shall be applied in the following priority order:
  - (1) *first*, to the CVB Room Tax until paid in full;
  - (2) *second*, to the Exhibition Center Room Tax, if any, until paid in full;
  - (3) *third*, to the Tourism Facilities Room Tax until paid in full; and
  - (4) *fourth*, to the Municipal Room Tax.
- (E) **Tourism Entity.** The CVB shall act as the “tourism entity,” as that term is defined in the Room Tax Act, for purposes of providing staff, support services and assistance to the Room Tax Commission in developing and implementing programs to promote the Fox Cities Tourism Zone to visitors, as more fully set forth in an agreement between the Room Tax Commission and the CVB. The CVB may also

hold and administer the Tourism Facilities Room Tax on behalf of the Room Tax Commission in furtherance of the purpose of the Tourism Facilities Room Tax, except when a related Pledge Agreement is in effect.

- (F) **Collection and Administration of Room Tax; Operator Reports.** This Ordinance shall be administered by the City's Clerk. The Room Tax imposed by this Ordinance shall be payable on each Quarterly Payment Date to the City (or to a Fiscal Agent on behalf of the City pursuant to a Fiscal Agency Agreement). A report shall be filed by each Operator with the City's Director of Finance (or with a Fiscal Agent) on or before each Quarterly Payment Date. Such report shall show the gross room receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of Room Tax imposed for such period, and such other information as the City deems necessary. Every Operator required to file such quarterly report shall, with its first report, elect to file an annual report based on either the calendar year or its fiscal year. Such annual report shall be filed within 90 days after the close of each such calendar or fiscal year. The annual report shall summarize the quarterly reports, shall reconcile and adjust for errors in the quarterly reports, and shall contain certain such additional information as the City requires. Such annual reports shall be signed by a representative of the Operator or its duly authorized agent, but need not be verified by oath. The City may, for good cause, extend the due date for filing any report, but in no event shall such extension be longer than one month after the due date.
- (G) **Operator Permit Required.** Every Operator is required under this Ordinance to file with the City's Clerk an application for a permit for each place of business that is required to pay Room Tax hereunder. Every application for a permit shall be submitted to the City's Clerk using a form prescribed by the City and shall set forth the name under which the Operator transacts or intends to transact business, the location of its place of business, and such other information as the City requires. The application shall be signed by the owner of the Operator if a sole proprietor and, if not a sole proprietor, by an authorized representative of such Operator. Together with the permit application, each Operator shall pay the City an initial fee of \$20.00 for each permit. A permit issued hereunder is non-transferable.
- (H) **Penalty for Violations.** In addition to the Schedule of Forfeiture described in subsection [(J)] hereof, any Operator in violation of the terms of this Ordinance by failing to obtain a permit shall be subject to a penalty not to exceed \$200.00 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 Operator 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 may revoke or suspend any permit issued hereunder for failure to comply with the provisions hereof.
- (I) **Liability for Room Tax on Sale or Transfer of Business.** If any Operator sells or transfers all or substantially all of its interest in its hotel, motel or other lodging

accommodation, its successors or assigns shall withhold sufficient amounts from the purchase price to pay any amount of Room Tax liability due through the sale or transfer date until the Operator produces a receipt from the City's Treasurer that its liability has been paid in full or a certificate stating that no Room Tax amount is due. If a successor Operator fails to withhold such amount from the purchase price as required, such successor Operator shall become liable for payment of the Room Tax amount it is required to withhold.

- (J) **Schedule of Forfeiture.** In addition to paying the Room Taxes due hereunder, any Operator that has failed to pay any Room Tax when due shall be required to pay a forfeiture in an amount equal to 25% of the Room Tax due from the Operator to the City for the previous year and unpaid, or \$5,000, whichever is less, for failure to pay the Room Tax due hereunder.
- (K) **Confidentiality of Information.** To the extent permitted under the law, the information provided to the City under Section 66.0615 (2) of the Wisconsin Statutes shall remain confidential; *provided, however*, that the City or any employee thereof may use such information in the discharge of duties imposed by law or of the duties of their 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.
- (L) **Enforcement.** The City shall enforce this Ordinance in accordance with the Room Tax Act.
3. **Publication of Ordinance.** This Ordinance shall be published within 15 days after its passage, either in its entirety or in the form of a notice containing the information required under Section 62.11(4)(c)2. of the Wisconsin Statutes, in the official newspaper of the City as a class 1 notice under Chapter 985 of the Wisconsin Statutes.
4. **Fiscal Agency Agreement.** The Mayor and the Clerk of the City are hereby authorized to enter into a Fiscal Agency Agreement with the other Municipalities, the Room Tax Commission, and a Fiscal Agent for the purposes of the receipt of the Room Tax from the Operators and the application thereof in accordance with this Ordinance and any Pledge Agreement. The Mayor and the Clerk are hereby authorized and directed for and in the name of the City to execute and deliver the Fiscal Agency Agreement, in substantially the form provided to this meeting, with such insertions of corrections thereto as shall be approved by the above officers consistent with the terms of this Ordinance, the execution thereof to constitute conclusive evidence of the approval of any such insertions or corrections.
5. **Conflicting Ordinances Superseded; Severability.** This Ordinance continues, amends, and restates the Prior Ordinance. 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 adopted and approved shall not invalidate other sections or provisions hereof.

6. **Effective Date.** This Ordinance shall take effect on the date that is the later of (i) May 1, 2018 or (ii) the day after the date of publication of this Ordinance as described in Section 3 hereof.

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Adopted: April 18, 2018

Approved: April 18, 2018

Publication Date: April 23, 2018

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Timothy M. Hanna, Mayor

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Kami Lynch, City Clerk



## CERTIFICATIONS BY CLERK

I, Kami Lynch, hereby certify that I am the duly qualified and acting Clerk of the City of Appleton, Wisconsin (the “City”), and as such I have in my possession, or have access to, the complete corporate records of said City and of its Common Council (the “Governing Body”) and that attached hereto is a true, correct, and complete copy of the ordinance (the “Ordinance”) entitled:

### **Amended and Restated Ordinance Imposing a Room Tax on the Privilege of Furnishing, at Retail, Except Sales for Resale, Rooms or Lodging to Transients**

I do hereby further certify as follows:

1. **Meeting Date.** On April \_\_\_\_, 2018, a meeting of the Governing Body was held commencing at \_\_\_\_\_ p.m.
2. **Posting.** On April \_\_\_\_, 2018 (and not less than 24 hours prior to the meeting), I posted, or caused to be posted, at the City’s offices in Appleton, Wisconsin a notice setting forth the date, time, location, and subject matter (including specific reference to the Ordinance) of said meeting.
3. **Notification of Media.** On April \_\_\_\_, 2018 (and not less than 24 hours prior to the meeting), I communicated or caused to be communicated, the date, time, location, and subject matter (including specific reference to the Ordinance) of said meeting to those news media who have filed a written request for such notice and to the official newspaper of the City.
4. **Open Meeting Law Compliance.** Said meeting was a regular meeting of the Governing Body that was held in open session in compliance with Subchapter V of Chapter 19 of the Wisconsin Statutes and any other applicable local rules and state statutes.
5. **Members Present.** Said meeting was duly called to order by the \_\_\_\_\_ (the “**Presiding Officer**”), who chaired the meeting. Upon roll call, I noted and recorded that there were \_\_\_\_\_ members of the Governing Body present at the meeting, such number being a quorum of the Governing Body.
6. **Consideration of and Roll Call Vote on Resolution.** Various matters and business were taken up during the course of the meeting without intervention of any closed session. One of the matters taken up was the Ordinance. A proper quorum of the Governing Body was present for the consideration of the Ordinance, and each member of the Governing Body had received a copy of the Ordinance. All rules of the Governing Body that interfered with the consideration of the Ordinance, if any, were suspended by a two-thirds vote of the Governing Body. The Ordinance was then introduced, moved, and seconded, and after due consideration, upon roll call, \_\_\_\_\_ of the Governing Body members voted Aye, \_\_\_\_\_ voted Nay, and \_\_\_\_\_ Abstained.

7. **Adoption of Ordinance.** The Ordinance was supported by the affirmative vote of a majority of a quorum of the members of the Governing Body in attendance. The Presiding Officer then declared that the Ordinance was passed, and I recorded the Ordinance.

8. **Publication of Ordinance.** I have caused the Ordinance, or a notice thereof, to be published as specified in the Ordinance.

9. **Approval of Presiding Officer.** The Ordinance was approved by the Presiding Officer on April \_\_\_\_\_, 2018, and I have recorded the approval. The approval is evidenced by the signature of the Presiding Officer on the copy of the Ordinance to which this certificate is attached.

IN WITNESS WHEREOF, I have signed my name and affixed the seal of the City, if any, hereto on April \_\_\_\_\_, 2018.

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Clerk

[SEAL]