

COURTESY SAMPLE ORDINANCE

The following pages contain a collection of ordinance provisions and inclusions comprised from multiple local government ordinances submitted to DCA. There is no specific format for an ordinance or resolution setting forth lodging excise taxes being imposed by a local government in Georgia. Sections included herein may or may not have been written by an attorney.

The sample is provided solely for any local government's use in determining which, if any, portions of this sample may have relevance to their particular situation and may wish to include in some way in their official local lodging tax ordinance or resolution.

This sample is color-coded as follows:

RED highlighted text is text that would need to be made specific for your local government;

YELLOW highlighted text denotes content that, by statute, must be included somewhere in the ordinance or resolution;

BLACK text is general wording that has been used in one or more ordinances in the past, and though it usually has been garnered from relevant Hotel-Motel Tax law, the precise wording may be altered as needed by your local government to express or clarify its actual intent regarding a certain condition, event or circumstance. Specific wording of sections herein should not be directly copied into a legal document without review or advice by an attorney.

*Notes have also been made throughout the document to help guide you through the process of creating an ordinance.

*The ordinance or resolution for a local government should be created, or at minimum approved, by your government's legal counsel. The sample ordinance herein is provided as a courtesy only. DCA does **not** create such legal documents, and makes no warranty whatsoever that any ordinance or resolution created from this sample, or containing excerpts from this sample, would suffice for your local government's defense against any particular legal claim.*

SAMPLE

ORDINANCE
OF

**OUR LOCAL GOVERNMENT,
A POLITICAL SUBDIVISION
OF THE STATE OF GEORGIA**

As to

**EXCISE TAX – ROOMS, LODGINGS &
ACCOMMODATIONS**

AN ORDINANCE TO IMPLEMENT TITLE 48, CHAPTER 13, ARTICLE 3, SECTION 51(x)(x) OF THE OFFICIAL CODE OF GEORGIA ANNOTATED, - EXCISE TAX ON ROOMS, LODGINGS, AND ACCOMMODATIONS, AND TO PROVIDE FOR THE COLLECTION BY OPERATOR; TO PROVIDE FOR ADMINISTRATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the {Board of Commissioners/City Council of [Our Government]}, a political subdivision of the State of Georgia, is authorized under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated levy certain excise taxes; and

WHEREAS, the {Board of Commissioners/City Council of [Our Government]}, a political subdivision of the State of Georgia, is authorized under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated to make available the funds so collected for the purpose of promoting, attracting, stimulating, and developing conventions and tourism in the {County/City}; and

WHEREAS, {County/City}, a political subdivision of the State of Georgia is designated as a “special district” pursuant to Title 48, Chapter 13, Article 50.1 of the Official Code of Georgia Annotated for the purpose of implementing an excise tax on rooms, lodging and accommodations; and

WHEREAS, the options of local citizens having been heard at public meetings call for such purposes;

NOW, THEREFORE, the {Board of Commissioners/City Council of [Our Government]}, a political Subdivision of the State of Georgia, resolves to adopt an Excise Tax Ordinance pursuant to said authority; and therefore, the {Board of Commissioners/City Council of [Our Government]}, a political subdivision of the State of Georgia does publish, state and promulgate the following ordinance:

Ordinance Name/Citation Section

The ordinance may be cited as your government so chooses, but some common examples are below:

“{County/City} Lodging Ordinance” –or-

“{County/City} Hotel Motel Excise Tax Ordinance” –or-

“{County/City} Excise Tax on Rooms, Lodgings and Accommodations”

Authorization Paragraph Citation Section

This section should identify which section of the O.C.G.A. your government is citing in order to legally collect and expend the tax. The specific paragraph must be cited:

This ordinance is enacted by virtue of the powers set out in Title 48, Chapter 13, Article 3, Section 51(x)(x) of the Official Code of Georgia Annotated, as amended.

Ordinance Purpose Section

This section should simply identify the purpose of the ordinance:

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 furnished by any person or legal entity licensed by or required to pay business or occupational taxes to, the {County/City} for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, rental cabin or any other place in which rooms, lodgings, or accommodations are regularly furnished for value.

Definitions Section

This section should clearly identify and define any words, acronyms, or terms used throughout the ordinance. Some common examples often included are shown below:

Definitions: As used in this ordinance, the following words, terms and phrases shall have the meanings ascribed to them herein, except when the context clearly indicates a contrary meaning.

- a. **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 of {County/City} is without power to impose the tax herein provided.
- b. **Tax:** means the tax on occupants imposed by this article, as provided by O.C.G.A. §48-13-51(x)(x)

- c. **Estimated Tax Liability:** The lodging provider's prospective tax liability based upon the average monthly tax remittance in the prior fiscal year, as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.
- d. **Operator / Innkeeper:** any person operating a hotel/motel (as set out herein) in {County/City}, including, but not limited to, the owner or proprietor of such premises, the lessee, sub lessee, lender in possession, licensee, online travel companies, or any other person otherwise operating such hotel/motel, including private owners who rent or lease private residences for more than two days in any one year.
- e. **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.
- f. **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.
- g. **Hotel/Motel/Cabin/Residence/Lodge:** any structure or any portion of a structure including any lodging house, studio, hotel, motel, motor hotel, auto court, inn, public club, lodge, tourist camp, tourist cabin, rental cabin, or private club containing guest rooms and which is occupied, or is intended or designed for occupancy, by guests, whether rent is paid in money, goods, labor or otherwise.
- h. **Guest Room:** a room or rooms occupied, or intended, arranged, or designed for occupancy, by one or more occupants for the purpose of living quarters or residential use.
- i. **Rent:** the considerations or value received in money or otherwise, including all receipts, cash, credits, and property or services of all kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction there-from whatsoever.
- j. **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 at least ninety (90) consecutive days.
- k. **Return:** any return filed or required to be filed as herein provided.
- l. **Due Date:** the twentieth (20th) day after the close of monthly period for which tax is to be computed.
- m. **Folio:** means the primary documentation produced by a hotel or other Facility that demonstrates interaction between the operator and the occupant, and which, at a minimum, reflects the name and address given by the occupant, the date(s) of occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax(es), and the method(s) of payment.
- n. **Monthly Period:** means the calendar months of any year.
- o. **Tax Supervisor:** means the individual appointed by the {County/City}, or the individual of any office of the {County/City} which may in the future be designated as the administrative entity to collect the tax.

Tax Rate Section

This section must identify the rate at which the tax is set. (This section could also be incorporated into the "Authorization Paragraph Citation Section"):

Rate of Taxation: There is hereby set and levied on the occupant of a guest room of any hotel/motel/cabin/residence/lodge located within the special district a tax in the amount of **X percent (X %)** of the gross rent for such occupancy.

Effective Date Section (Required)

This section should simply cite the date which the ordinance becomes effective:

Commencement/Effective Date of Ordinance: The tax herein imposed shall be paid upon any occupancy occurring on or after **{Effective Date of Ordinance}**, including, but not limited to such occupancy that was entered into pursuant to a contract, lease or other agreement entered into prior to such date.

Tax Exemptions Section (Required)

Though you may choose certain exemptions to add to this list, an exemption section is required due to mandated exemptions in O.C.G.A. § 48-13-51:

Exemption from Tax: No tax shall be levied pursuant to this ordinance under the following situations:

- a. No tax shall be levied under this Section for the **use of meeting rooms.**
- b. No tax shall be levied under this Section for the **use of any jail cell, detention center or other building where such housing or detention is under legal restraint.**
- c. No tax shall be levied under this Section for the **use of any hospital medical treatment facility.**
- d. No tax shall be levied under this Section upon the fees or charges **for any room, lodgings or accommodations furnished for a period of one or more days to the State of Georgia employees or officials when traveling on official business.**
- e. No tax shall be levied under this Section upon the fees or charges **for any room, lodging or accommodations furnished for a period of one or more days to local government employees or officials when traveling on official business.**
- f. No tax shall be levied under this section **for rentals over thirty (30) consecutive days.**
- g. No tax shall be levied under this Section upon 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 or natural disaster.**

Tax Exemption of Permanent Resident

Exemption – Permanent residences: Notwithstanding any other provision of this section, no tax shall be imposed hereunder upon a permanent resident.

Instructions for Lodging Operator Section

Collection of tax by operator: It shall be the duty of every operator providing lodging accommodations within the jurisdictional boundaries of **{County/City}** to collect the tax on occupants as imposed herein.

Lodging Operator Registration Section

This section should identify mandated or local registration requirements, which the lodging operator must complete to legally operate:

Registration of operator: Every person engaging in or about to engage in the business of providing lodging accommodations, as above defined, in the special district shall immediately register said business with the {County} Tax Commissioner's Office, as the duly authorized representative of {County/City}, a political subdivision of the State of Georgia, on a form provided by the {County} Tax Commissioner for such purpose. Persons engaged in such business must so register no later than thirty (30) days after the date this section becomes effective, but such grace period for the filing of the registration after the effective date of the tax shall not relieve any person from the obligation of payment or collection of such tax on and after the date of imposition thereof.

- a. The required registration hereunder shall set forth the name under which the operator transacts business or intends to transact business; the location of the place or places of business, the mailing address of the business, the principal contact person at said business and such other information as would facilitate the collection of the tax.
- b. The registration shall be signed by the owner (if a natural person), by an officer (if a corporation) or a partner (if a partnership).
- c. A separate registration shall be required for each place of business of an operator. However, a realtor offering cabins for rent shall be deemed to be one place of business and shall not require a separate registration for each cabin rented.
- d. An operator offering more than one cabin or unit for rent under the same federal and state tax identification number shall be required to file the same number of returns as required by the State of Georgia for the filing of state sales tax returns.

Operating Certificate Section

This section should clearly identify the duty of the county tax commissioner in regards to issuance of the occupancy tax certificate:

Certificate of taxing authority: Upon the registration of an operator as hereinabove provided, the {County} Tax Commissioner as the duly authorized representative of {County/City}, a political subdivision of the State of Georgia shall issue to such operator a certificate of authority to collect the tax on occupant. Each certificate shall state the name and location of the business or person to which it relates.

Tax Remittance Section

This section should clearly lay out the reporting requirements of the lodging operator, as well as instructions and due dates for the remittance of all received taxes to the local government authority:

Due date and required report: All taxes levied by this Ordinance shall be due and payable to the Tax Commissioner or designated representative of {County/City} monthly, on or before the twentieth (20th) day of every month next succeeding each respective month in which taxes are collected, and payment shall be accompanied by return for the preceding monthly period showing the gross rent, rent from permanent residents, taxable rent, amount of tax collected or otherwise due for a period, and such other information as may be required by the Tax Commissioner or governing authority of {County/City}.

In the event that an Operator is permitted under applicable state guidelines to make quarterly sales tax returns to the State of Georgia, said Operator shall be permitted to make quarterly sales tax returns to {County/City}, Georgia. At the time of registration, the Operator shall indicate that he is permitted to make quarterly sales tax returns together with month and day said quarterly returns are due. The failure of the Operator to indicate that he is permitted under applicable state statute to file quarterly reports will infer that monthly reports are due and collectable.

At the time any such report is due, the Operator shall file a copy of the corresponding state sales tax return for the sole purpose of verifying the sums reported and due.

In the event an Operator is permitted under applicable state guidelines to file annual excise, or lodging tax returns, to the State of Georgia, said operator is required to file monthly or quarterly returns for lodging tax to {County/City}, Georgia.

In the event there are no rentals in a reporting period, lodging providers are required to file a return to {County/City}, Georgia stating they had zero rentals for the period.

Fund Transfer Section

This section should give instructions to the tax commissioner in dealing with the handling of the received funds:

Deposit to general fund: No later than the **twenty-fifth (25th) day of each month**, the Tax Commissioner shall transfer to the General {County/City} Fund such excise taxes as have been paid under the provisions of this ordinance, and the statute-required portion of such funds shall thereafter at the direction of the {Board of Commissioners/City Council} be expended for the promotion of the tourism industry in {County/City}, or such funds at the direction of the {Board of Commissioners/City Council of [Our Government]}, Georgia, may otherwise be expended for the purpose of promoting tourism, conventions and trade shows as provided by statute.

Operator Collection Fee Section

This section should lay out any form of collection fee that may be kept by the lodging operator:

Collection fee allowed operators: Operators collecting the tax levied hereunder shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and payment of the amount due. The rate of the deduction shall be **X percent (X %)** of the amount due, but only if the amount due was not delinquent at the time of payment.

Penalty Against Lodging Operator Section

Penalty and Interest: The operator, in the event of operator's failure to pay tax when due, shall pay a penalty of **X percent (X %)** of the amount due plus interest on the total amount of delinquent taxes at the rate of **X (X %)** per annum. In addition, the operator shall not be entitled to the fee allowed in Article XIV of this Ordinance. The late penalty will be strictly enforced.

Further Penalties Against the Operator

This section should cover any penalties or further fines that the lodging operator could face if he/she/it does not correctly report or remit the required tax collection:

- (a) If any operator fails to file a return as required under the provisions of this section, the {County/City} shall make an estimate of the amount of gross rentals which are subject to the tax. The estimate shall be made for the period or periods in which the operator failed to file the return and shall be based upon any information which is or may come into the possession of the {County/City}.
- (b) The {Board of Commissioners/City Council of [Our Government]}, a political subdivision of the State of Georgia or its designated representative(s) shall give to the operator written notice of determination as herein provided. The notice may be served personally or by mail; if by mail such service shall be addressed to the operator at his/her/its last known address as it appears on any of the {County/City}'s records. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee.
- (c) The amount of the determination made hereunder shall bear interest at the rate of three-fourths of one percent per month, or a fraction thereof, from the twentieth day of the month following the monthly period for which the amount or any portion thereof should have been returned, until the day of payment.
- (d) In addition, a penalty of five percent (5%) of the tax due or \$5.00 whichever is greater for each 30 days or fraction thereof of delinquency, not to exceed twenty five percent (25%) or \$25.00 in the aggregate, whichever is greater, shall be assessed and paid by the operator to the {County/City}.
- (e) The estimated tax together with applicable penalties and interest may be collected utilizing any of the enforcement methods set forth in this Resolution.

Lodging Operator Records Section

Each lodging operator is required to keep records and/or books of transaction of every service rendered. This section should make that clear, as well as establish preferred guidelines:

Each operator collecting a tax under the provisions of this section shall keep for a period of at least three years all records, receipts, invoices, and other pertinent papers setting forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the {County/City} may, in writing, from time to time require.

Duties of the Local Government Authority Section

This section should identify what the local government is responsible for within the Hotel Motel tax process:

The {Board of Commissioners/City Council} or its designated representative (s) shall administer and enforce the provisions of this section for the collection of the tax herein imposed, and in so doing shall have the following powers:

- (a) To examine, or authorize the examination of, books, papers, records, financial reports, equipment, and other facilities of any operator subject to this Resolution, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- (b) To require the filing of reports by any person or persons having in their possession or custody information relating to rentals which are subject to the tax herein levied; and,
- (c) To allow a credit on any amount due payable from persons who paid the tax herein levied but who were erroneously or illegally subjected thereto.

Legal Obligation of the Ordinance Sections

The following three (3) sections (in the case of this example) cover the legally mandated stipulations of the ordinance that must be upheld by any lodging operator or entity. Other than what is mandated in the law it is up to the local government what is classified as, and how severe the punishment will be for, a violation:

Section 1

At any time within three years after any tax or any portion of such tax required to be collected becomes due and payable, the {County/City} attorney at the direction of the {Board of Commissioners/City Council} may bring an action in a court of competent jurisdiction in the name of the {County/City} to collect such amount due together with interest, court fees, filing fees, attorney's fees, and other legal fees incident thereto.

Section 2

If any operator becomes liable for any amount required to be paid by this section and subsequent thereto sells or quits the business, the successors or assignees of such operator shall withhold a sufficient amount of the purchase price to cover such amount due. In the event said purchaser of the business fails to withhold the required amount, he/she/it shall become personally liable for the extent of the tax owed, together with any applicable penalties and interest. Any operator or person who ceases to operate the entity under which the same is registered with the {County/City}, said operator or person must notify the Tax Commissioner in writing within thirty (30) days of closing said enterprise.

Section 3

- (a) Any person who shall do anything prohibited by this Resolution or who shall fail to do anything required by this Resolution shall be guilty of a misdemeanor, amenable to the process of the Magistrate Court of {County/City} and upon conviction, shall be assessed with any penalty, including fine, confinement, or both, allowed by law for the violation of {County/City} Resolutions or Ordinances each and every day that such violation exists shall be deemed a separate offense.
- (b) In order to enforce this Resolution or to correct or abate any violation of the Resolution, the {Board of Commissioners/City Council of [Our Government]}, in addition to other remedies may institute injunction, mandamus, or other appropriate action.

Severability Clause and Repealer Section

This section should establish which parts of the law are severable from the whole, where the legality of some part is challenged. Further, it should also repeal conflicting language and restate the effective date:

- (a) If any paragraph, subparagraph, sentence, clause, phrase, or any portion of this Resolution shall be declared invalid or unconstitutional by any Court of competent

jurisdiction, or if the provisions of any part of this Resolution as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Resolution not so held to be invalid, or the application of this Resolution to other circumstances not so held to be invalid. It is hereby declared to be the intent of the {Board of Commissioners/City Council} to provide separable and divisible parts, and it does hereby adopt any and all parts hereof as may not be held invalid for any reason.

- (b) All Resolutions or parts of Resolutions in conflict with the terms of this Resolution are hereby repealed, but it is hereby provided that any Resolution or law which may be applicable hereto and aid in carrying out or making effective the intent, purpose and provisions hereof, which shall be literally construed to be in favor of {County/City} is hereby adopted as part hereof.
- (c) The effective date of this Resolution shall be the 1st day of {month}, {20xx}.
{by statute, must be no earlier than the 1st day of the 2nd month following adoption}

Fees Section

This section should establish any fees that will be charged by the local government for the licensing issuance or services rendered:

In order to comply with the mandates of the applicable Laws of the State of Georgia, an administrative fee is hereby implemented on any business or person under the purview of the within ordinance. Said administrative fee shall be in the amount of \$25.00 payable annually. Said administrative fee shall be remitted to the Tax Commissioner of {County}, before the 1st day of {month} of each year that this ordinance is in effect. The administrative fee after {month, day} will be \$75.00. The Tax Commissioner, or designated representative, shall issue a lodging certificate to said enterprise paying said administrative fee.

Hearing Date and Signatures

This final section should have language identifying the adoption of the ordinance, and the date of the hearing. Lastly, the ordinance should be signed (preferably by all members of the commission/council) in order to affirm its legality:

Adopted, after publication, notice and hearing on the _____ day of _____, 20xx.

{Board of Commissioners/City Council
Of [Our Government]}, GEORGIA

(all Commission/Council members should sign)