

Town of Gardner
An Ordinance for the Collection of Tax on Overnight Lodging
Ordinance No. 01-2008

WHEREAS, Wisconsin Statutes §66.0615 provides that a municipality may adopt an ordinance imposing a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotel keepers, motel operators and other persons furnishing accommodations that are available to the public; and,

WHEREAS, if a tax is imposed under this statute, the municipality must spend at least seventy (70%) percent of the room tax collected on tourism promotion and development, as defined in Wisconsin Statutes §66.0616(1)(fm), and that the remaining amount may be spent on municipal purposes; and,

WHEREAS, the Town Board has researched the issue of implementing a room tax and had determined that the collection of such a tax would benefit the Town in its efforts to attract paid over night lodging at multiple lodging properties for the benefit of the community.

WHEREAS, the Door County Peninsula is promoted as a single destination, inclusive of all municipalities in the County, creation of a Tourism Zone among all municipalities furnishing, at retail, rooms or lodging to transients by hotel keepers, motel operators and other persons furnishing accommodations that are available to the public is needed to ensure the continued promotion of Door County as a single destination; and,

WHEREAS, the creation of Tourism Zone as provided by Wisconsin Statutes §66.0615 requires the creation of a Intergovernmental Cooperation Commission created under Wisconsin Statutes §66.0301 to oversee the use of the collected tax on overnight lodging.

NOW THEREFORE, the Town Board of the Town of Gardner, Door County, Wisconsin, does hereby enact the following ordinance to be effective in the Town of Gardner.

Section 1. Definitions

In this chapter, the following shall apply:

Commission has the meaning defined in Wisconsin Statutes §66.00615(a). If two or more municipalities in a zone impose a room tax under section (a), the municipalities shall enter into a contract under Wisconsin Statutes §66.0301 to create a commission under §66.0301(2). Each municipality in a single zone that imposes a room tax shall levy the same percentage of tax. If the municipalities are unable to agree on the percentage of tax for the zone, the commission shall set the percentage.

Gross receipts have the meaning as defined in Wisconsin Statutes §76.48(d): A Gross receipts means total revenue received from the retail furnishing of rooms, lodging, or similar accommodations by a hotel or motel as defined herein.

Hotel and Motel have the meaning as defined in Wisconsin Statutes §77.52(2)(a)1. “Hotel and Motel” means a building or a group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, bed and breakfast establishments, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins, commercial indoor lodging facilities and any other building or group of building in which accommodations are available to the public, except accommodations rented for a continuous period of more than thirty (30) consecutive days and accommodations furnishing 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.

Municipality means the Town of Gardner, Wisconsin

Payor means the person or entity who owes the tax imposed by this article.

Room tax means the tax imposed by this Ordinance.

Tourism has the meaning as defined in Wisconsin Statutes §66.0615(1)(e): tourism means any travel for recreational, business or educational purposes.

Transient has the meaning as defined in Wisconsin Statutes §77.52(2)(a)1: transient means any person residing for a continuous period of less than thirty (30) consecutive days in a hotel, motel, or other furnished accommodations available to the public.

Tourism Entity has the meaning as defined in Wisconsin Statutes §66.0615. A nonprofit organization that provides staff, development or promotional services for the tourism industry in the municipality, and as one of its primary purposes the generation of paid overnight stays. The tourism entity must have a governing board comprised of over fifty (50%) percent representation from the area’s restaurants, drinking places, gift/souvenir shops, hotels, motels, bed and breakfasts, tourist rooming houses, public golf courses, amusement parks or other tourist attractions; twenty-five (25%) percent or more of the total board must be owner’s or operators of room tax paying lodging establishments.

Tourism promotion and development has the meaning as defined in Wisconsin Statutes §66.0615(1)(fm): “Tourism promotion and development” means any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at more than one establishment on which a room tax

may be imposed, that are owned by different persons and located within the municipality has only one such establishment, reasonably likely to generate paid overnight stays in that establishment:

1. Marketing projects, including advertising media buys, creation or distribution of printed or electronic promotional tourist materials, or efforts to recruit conventions, sporting events, or motor coach groups.
2. Transient tourist informational services.
3. Tangible municipal development, including a convention center.

Tourism Zone has the meaning as defined in Wisconsin Statutes §66.0615: “Tourism Zone” means an area made up of two or more municipalities that, those municipalities agree, is a single destination as perceived by the traveling public.

Section 2. Creation of Tourism Zone

Pursuant to Wisconsin Statutes §66.0615, the Town of Gardner will join the Door County Tourism Zone for the purpose of promoting the County as a single destination.

Section 3. Imposition of Room Tax

(a) Tax Imposed.

Pursuant to Wisconsin Statutes §66.0615, a tax is hereby imposed on the privilege and services of furnishing, at retail, of rooms or lodging to transients by hotel keepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the rate of 5.5% percent of the gross receipts from such retail furnishing of rooms or lodgings. Such tax shall not be subject to the selective sales tax imposed by Wisconsin Statutes §77.52(2)(a)1, and may not be imposed upon sales to the federal government and persons listed under Wisconsin Statutes §77.54(9a).

(b) Taxation Effective Date.

The effective date of the Room Tax shall be May 19, 2008.

(c) Room Tax Payment Frequency.

Room Tax should be paid by the lodging property on a monthly basis. It should be paid by the end of the month following the month in which it was collected. The Room Tax is owed to the local municipality, which imposed the tax, but for convenience, the municipality directs that all checks be sent directly to the Commission. If the Room Tax checks for all properties in a municipality are sent directly to the Commission, the Commission will send one check by the fifteenth of each month to the municipality for the thirty percent (30%) of all Room Tax collected the previous month along with a report showing the amount of Room Tax collected from each lodging property. The Commission shall do all the paperwork as part of their monitoring.

- (d) Room Tax Responsibility.
The correct amount of Room Tax shall accompany each lodging property's monthly tax return and be made payable to the municipality or if the municipality prefers to the Door County Tourism Zone Commission. If any person liable for any amount of tax under this agreement sells out their business or otherwise quits the business, their successors, or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the municipal treasurer that it has been paid or a certificate stating that no amount is due. If any person subject to the tax imposed by this agreement fails to withhold such amount of tax from the purchase price as required, they shall become personally liable for the payment of the amount required to be withheld by them.
- (e) Monthly Room Tax Return.
The Monthly Room Tax Return filed with the room tax payment by the lodging property shall contain the following information: name of the business, physical address, postal address, municipality located within, name of the designated person filling out the return, month and year the return is for, total available rental units during the month (number of rental units in the facility multiplied by the days in the month or days they were open), number of rooms or units rented, total lodging sales for the month, room tax to be paid (which should equal total lodging sales multiplied by the 5.5% Room Tax) and the signature of the person filling out this return, attesting to the accuracy. This information will allow the municipality or Commission to judge the accuracy of the return and with all returns in total, to judge the effectiveness of the tourism promotion.
- (f) Delinquent Room Tax.
Delinquent Room Tax returns shall be subject to a twenty-five dollar (\$25) late filing fee. The tax imposed by this Ordinance shall become delinquent if not paid by the due date of the return. A forfeiture of twenty-five percent (25%) of the room tax due or five thousand dollars (\$5,000.00) whichever is less, of the tax imposed, is hereby established and due and owing in the event that the room tax is not paid within thirty (30) days after the due date of the return. To prevent payment omissions, within ten (10) days of a past due Room Tax payment, the Commission, if they were to receive the check, should send a written past due statement to the designated person or agent at the late paying lodging business. In addition to this forfeiture, all unpaid taxes under this Ordinance shall bear interest at the rate of one percent (1%) per month from the due date of the return until received and deposited by the Commission. Whenever the Commission has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, or that the tax has not been paid, the Commission is authorized to examine and inspect the books, records, memoranda and property of any person in order to verify the tax liability of the person or another person. The Commission shall make an estimate of the amount of tax owed. Based on this

estimate, the Commission shall add a penalty of five percent (5%) thereof. If any past due tax, interest or penalties are due at the beginning of a calendar year, a new annual room tax-lodging permit will not be issued by the clerk of the municipality unless satisfactory financial arrangements have been made with the municipal treasurer and Commission to satisfy payment.

(g) Confidentially of Reports.

All Room Tax returns, schedules, exhibits, writings or audit reports relating to such returns, on file with the Commission and the municipality are deemed confidential pursuant to Wisconsin Statutes §66.0615(3) except they may divulge their contents to the following, and no others:

1. The person who filed the return.
2. Officers, employees or agents of the municipal treasurer and the Commission.
3. Other persons for the use in the discharge of duties imposed by law, or in the discharge of the duties of their office (unless otherwise prohibited by law), or by order of a court.

Section 4. Lodging Establishments to be Licensed

(a) License Required. Any party supplying transient lodging in the Town of Gardner shall obtain and maintain a permit from the Commission permitting the rental of accommodations. No accommodations shall be rented or available for rental for a period of less than thirty (30) days by any party not possessing a lodging permit issued by the Commission.

(b) Permit Application. Any party furnishing lodging accommodations to transient guests in the Town shall annually file, on or before the end of the year, with the Commission, an application to operate each place of business subject to this Ordinance. There shall be no cost for the filing of the application for the permit. The application form shall include, at minimum, the following information:

1. The name of the business under which the person, partnership or corporation transacts business or intends to transact business. (This name shall agree with that used for Sales Tax Permits.)
2. The name of the agent for the business or other person designated as responsible to remit the Room Tax Means to contact this person including email address, postal address, telephone number, fax number and cell phone number.
3. The physical and mailing address of the business.
4. Number of rental units at the location for each month of the year during which the business is operating.
5. The signature of the person designated in item b. above.

(c) Permit Review and Issuance. The Commission may accept the application, review it for accuracy and issue the permit. The permit shall not be assignable. The permit shall only be valid for the person named on the application as being responsible to remit the Room Tax. In cases where that person should change or

the ownership should change during the life of the permit, the application and issuance of a new permit shall be necessary.

- (d) Penalty of Violation. Any party in violation of the terms of this Ordinance shall be subject to a forfeiture of not less than \$20 nor more than \$100 for each violation. Each room or unit separately rented and each day of such rental shall be a separate violation. In addition, the Town or Commission may obtain injunctive relief to discontinue violation of this Ordinance. Any party deemed to have violated this Ordinance shall be obligated to pay the costs of prosecution, in addition to actual attorney fees expended by the Town or Commission.

Section 5. Creation of a Commission

- (a) Commission Purpose.
The municipalities shall enter into a contract under Wisconsin Statutes §66.0615 to create a commission under the Intergovernmental Cooperation provisions of Wisconsin Statutes §66.0301(2). The Commission shall contract with a Tourism Entity for the promotion of the destination with a minimum of 70% of the room taxes collected.
- (b) Commission Membership.
The Commission created by a Tourism Zone Agreement under Wisconsin Statutes §66.0615 shall consist of the following members:
1. Three (3) members from each municipality in which annual tax collections exceed \$1,000,000.
 2. Two (2) members from each municipality in which annual tax collections exceed \$300,000.
 3. One (1) member from each municipality in which annual tax collections are \$300,000 or less.
 4. Two additional members, who represent the Wisconsin hotel and motel industry, shall be appointed to the Commission by the chairperson of the Commission, shall serve for a one-year term at the pleasure of the chairperson and may be reappointed. These members shall not be members of the Board of Directors or employees of the Tourism Entity.
- (c) Commission Member Appointment Process and Term of Office.
Members of the Commission shall be appointed by the principal elected official in the municipality and shall be confirmed by a majority vote of the members of the municipality's governing body who are present when the vote is taken. Commissioners shall serve a one-year term, at the pleasure of the appointing official and may be reappointed. If a member of the Commission resigns or is removed for cause, the municipal body that appointed the member may appoint another person to fulfill the unexpired term. If the subject member was appointed by the chairperson, they may appoint another person to fill the unexpired term. Members of the Commission shall receive no pay, but may be reimbursed for their travel expense.

- (d) Applicability of State Open Meetings Law
While membership on the Commission is provided for each municipality in the zone agreement, all membership positions need not be filled if a municipality does not see a need. A member community that does not appoint a representative shall not count towards the determination of a quorum. The Commission shall be subject to the provisions of the Wisconsin Open Meetings and Open Records laws as amended.
- (e) Role of Commission
The Commission shall perform such tasks as are specified in the Tourism Zone Agreement.

Section 6. Distribution of Room Taxes Collected

Upon receipt of the room taxes that are collected, the Commission shall retain seventy (70%) percent of the room taxes. The Commission shall distribute thirty (30%) percent of the room taxes to the Town Clerk for such purposes as the Town Board shall determine. All municipalities will still receive their monthly, quarterly and annual reports if Room Tax checks are sent directly to the Commission.

Section 7. Tourism Entity

The Commission shall contract with a Tourism Entity who shall spend the room taxes on tourism promotion and development. The Tourism Entity shall not use any of the room tax revenue to construct or develop a lodging facility.

Section 8. Tracking and Reporting Room Tax Revenue Expenditures

The Tourism Entity shall track the use of Room Tax revenues and expenditures and state its impact on generating paid over night stays in the community. The Tourism Entity shall permit and allow inspections of its records pertaining to the use of the room tax funds upon request of the Tourism Commission at reasonable times. The Tourism Entity shall provide a written report as determined by the Tourism Commission, no less than annually, and such report shall be available to the Municipality and public upon request.

Section 9. Effective Date

This ordinance shall be effective on its passage and publication with the tax to be effective on the date as stated herein.

Town of Gardner

Paul DeWitt, Town Chairman

Attest:

Amy Sacotte, Town Clerk

Date Introduced: 5-5-08 Date Adopted 5-5-08 Publication Date: 5-5-08