

CITY OF PLYMOUTH

ORDINANCE No. 2020-

ORDINANCE ADDING SECTION 1185 OF THE CITY CODE CONCERNING LODGING TAX

THE CITY OF PLYMOUTH ORDAINS:

SECTION 1. Amendment. The Plymouth City Code is hereby amended to add Section 1185 as follows:

1185.01. – Lodging Tax

- (a) *Imposition of tax.* There is hereby imposed a tax of three percent on the gross receipts from the furnishing for consideration of lodging.
- (b) *Collection.* Each operator shall collect the tax imposed by this section at the time rent is paid. The tax collections shall be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging.
- (c) *Payment and returns.* The taxes imposed by this section shall be paid by the operator to the city not later than 25 calendar days after the end of the month in which the taxes were collected. At the time of payment the operator shall submit a return upon such forms and containing such information as the city may require. The return shall contain the following minimum information:
 - (1) The total amount of rent collected for lodging during the period covered by the return.
 - (2) The amount of tax required to be collected and due for the period.
 - (3) The signature of the person filing the return or that of his agent duly authorized in writing.
 - (4) The period covered by the return.
 - (5) The amount of uncollectible rental charges subject to the lodging tax.

The operator may take a credit against taxes payable the amount of taxes previously paid for rent that was not actually collected.

- (d) *Examination of returns, adjustments, notices, demands and audit.* After a return is filed, the city shall examine it and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness including a formal audit. 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 city within ten calendar 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 city within ten calendar days after determination of such refund.
- (e) *Refunds.* Any person may apply to the city 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 refund shall

be considered unless filed within one year after such tax was paid, or within one year from the filing of the return, whichever period is the longer. The city 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 city shall credit the amount of the allowance against any taxes due under this section from the claimant and the balance of the allowance, if any, shall be paid by the city to the claimant.

- (f) *Failure to file a return.* If any operator required by this section to file a return shall fail 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 calendar 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 city shall make a return or corrected return, for such person from such knowledge and information as the city 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 within five calendar days of the receipt of written notice and demand for such payment. Any such return or assessment made by the city 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. If any portion of a tax imposed by this section is not paid within 30 calendar days after it is required to be paid, the city attorney may institute such legal action as may be necessary to recover the amount due plus interest, and costs and disbursements. Upon a showing of good cause, the city may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by this section provided that interest during such period of extension shall be added to the taxes due at the rate of one and one-half percent per month.
- (g) *Interest.* The amount of tax not timely paid shall bear interest at the rate of one and one-half percent per month from the time such tax should have been paid until paid. Any interest shall be added to the tax and be collected as part thereof.
- (h) *Violations.* Any person who shall willfully fail to make a return required by this section; or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any interest imposed by this section after written demand for such payment or who shall refuse to permit the city to examine the books, records and papers under his or her control, or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.
- (i) *Use of proceeds.* Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this section shall be used in accordance with two-thirds of the revenues from this special tax will be used for capital improvements to public recreational facilities and the remaining one-third will be used to fund a local convention and tourism bureau .
- (j) *Appeals.* Any operator aggrieved by any notice, order or determination made by the city under this section 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. The petition for review shall be filed with the city clerk within ten calendar days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting review. Upon receipt of the petition the city manager, or the manager's designee, shall set a date for a hearing and give the petitioner at least five calendar days' prior written notice of the date, time and place of the hearing. At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order

or determination should be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense. The hearing shall be conducted by the city manager or the manager's designee, provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought. The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable sections of this section and the evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the city. Any decision rendered by the city manager or the manager's designee, pursuant to this subdivision may be appealed to the city council. A petitioner seeking to appeal a decision must file a written notice of appeal with the city clerk within ten calendar days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the council agenda as soon as is practical. The council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the council that the findings and conclusions were incorrect, the council may modify, reverse or affirm the decision of the city manager or his designee upon the same standards as set forth in this subdivision.

SECTION 2. This amendment shall take effect May 1, 2020.

ADOPTED by the City Council this 18th day of February, 2020.

Jeffry Wosje, Mayor

ATTEST:

Sandra R. Engdahl, City Clerk