CHAPTER 182
Lodging Tax

182.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.
182.011 Authority to Levy Tax.
182.012 Purposes of Tax; Imposition of Tax; Rate.
182.013 Exemptions.
182.014 Allocation of Funds.
182.015 Effective Date.

182.02 DEFINITIONS.

182.03 TAX TO BE SEPARATELY STATED AND CHARGED.

182.04 REGISTRATION.

182.05 REPORTING AND REMITTING.

182.06 PENALTIES AND INTEREST.

182.07 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY FISCAL OFFICER.

182.08 APPEAL.

182.09 RECORDS; INSPECTION; DESTRUCTION.

182.10 REFUNDS.

182.11 ACTIONS TO COLLECT.

182.12 CONFIDENTIAL REPORTS.

182.13 FRAUD.

182.98 SAVINGS CLAUSE.

182.99 VIOLATIONS – PENALTY.

182.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

182.011 AUTHORITY TO LEVY TAX.

The excise tax on lodging transactions established by this chapter 182 is authorized by § 5739.08 of the Ohio Revised Code. This excise tax is in addition to any tax levied pursuant to §§ 5739.02, 5739.09, or any other section of the Ohio Revised Code to the greatest extent permitted by law.

182.012 PURPOSES OF TAX; IMPOSITION OF TAX; RATE.

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements, road, street and highway construction and improvement, improvement of police protection, improvement of fire protection, improvement and construction of storm drainage, the improvement of general municipal functions, and for all lawful municipal purposes, an excise tax of three (3%) percent is hereby levied at a uniform rate on all rent transactions by which occupancy in a hotel and/or bed and breakfast is or is to be furnished to transient guests.

This tax constitutes a debt owed by the transient guest to the Village, which is extinguished only by payment to the operator as trustee for the Village, or to the Village. The transient guest shall pay the tax to the operator of the hotel or bed and breakfast at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient guest ceasing to occupy space in the hotel or bed and breakfast. If for any reason the tax due is not paid to the operator of the hotel or bed and breakfast, the Fiscal Officer may require that the tax be paid directly to the Village.

182.013 EXEMPTIONS.

(A) No tax shall be imposed under this chapter:

(1) Upon rents not within the taxing power of the Village under the Constitution or laws of Ohio or the United States;

(2) Upon rents paid by the state of Ohio or any of its political subdivisions.

(B) No exemption claimed under subsection (A) hereof shall be granted except upon claim therefor made at the time rent is collected, and, under penalty of perjury upon a form prescribed by the Fiscal Officer. All claims of exemption shall be made in the manner prescribed by the Fiscal Officer. The Fiscal Officer shall have the authority to waive the form requirement pursuant to this subsection (B) in the event the laws of the state of Ohio or of the United States provide for the protection of any person's identity.

182.014 ALLOCATION OF FUNDS.

The funds are to be allocated pursuant to municipal need(s) for the purposes stated above in § 182.012.

182.015 EFFECTIVE DATE.

Ordinance 1-2016, and as codified, does not repeal the existing sections of Ordinance No. 35-2007 but rather amends Ordinance No. 35-2007 effective March 17, 2016.

182.02 DEFINITIONS.

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the state of Ohio and Village of Madison, unless a different meaning is clearly required.

For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

As used in this chapter:

(A) "Bed and breakfast" has the same meaning as that stated in § 2.2(b)(15) of the Zoning Code of the Village of Madison.

(B) "Fiscal Officer" means the individual holding the office of Fiscal Officer of the Village of Madison and may include a person temporarily holding such office as Acting Fiscal Officer, when applicable.

(C) "Hotel" has the same meaning as that stated in § 5739.01(M) of the Ohio Revised Code, except that, in accordance with § 5739.09(G) of the Ohio Revised Code, a "hotel" includes establishments in which fewer than five (5) rooms are used for the accommodation of transient guests. The term "hotel" includes a "bed and breakfast" as defined herein except when the context clearly indicates otherwise.

(D) "Person" has the same meaning as that stated in § 181.03(29) of the Administrative Code of the Village of Madison.

(E) "Occupancy" mean the use or possession, or the right to the use or possession of any room or rooms, or space or portion thereof, in any hotel and/or bed and breakfast for dwelling, lodging, or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition, unless the person exercising occupancy uses or possesses, or has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging, or sleeping purposes.

(F) "Operator" means the person who is the proprietor of a hotel or bed and breakfast, whether in the capacity of owner, lessee, licensee, mortgagee in possession, or any other capacity. Where the operator performs its functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered compliance by both.

(G) "Rent" means the consideration received for occupancy valued in U.S. currency, whether received as currency or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

(H) "Transient guest" has the same meaning as that stated in § 5739.01(N) of the Ohio Revised Code.

182.03 TAX TO BE SEPARATELY STATED AND CHARGED.

(A) The tax to be collected pursuant to § 182.012 of this chapter shall be stated and charged separately from the rent, and shown separately on any record thereof, at the time when occupancy is arranged or contracted and charged for, and upon every evidence of occupancy, or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the Village of Madison, and the operator shall be liable for the collection thereof and for the tax.

(B) No operator of a hotel or bed and breakfast shall advertise or state in any manner, whether 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, any part will be refunded except in the manner hereinafter provided.

182.04 REGISTRATION.

Within thirty (30) days of the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel or bed and breakfast renting lodging to transient guests shall register said hotel or bed and breakfast with the Fiscal Officer and obtain from him or her a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

(i) The name of the operator;
(ii) The address of the hotel or bed and breakfast;
(iii) The date upon which the certificate was issued; and
(iv) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Lodging Tax ordinance of the Village of Madison by registering with the Fiscal Officer for the purpose of collecting from transient guests the Lodging Tax and remitting said tax to the Fiscal Officer. This certificate does not constitute a permit."

The registration requirement of this section is in addition to and in not in lieu of any other required permit approvals. There is no fee for registration pursuant to this section.

182.05 REPORTING AND REMITTING.

(A) Each hotel operator shall, on or before the last day of each calendar month make and file a return for the preceding month, on forms prescribed by the Fiscal Officer, showing the receipts from furnishing lodging, the amount of tax due from the operator to the Village for the period of time covered by the return, and such other information as the Fiscal Officer deems necessary for the proper administration of this chapter. The Fiscal Officer may extend the time for making and filing returns for good cause shown. Returns shall be filed by delivering or mailing same to the Fiscal Officer together with payment of the full amount of tax shown to be due thereon.

(B) Each bed and breakfast operator shall, on or before the last day of each quarter (March 31, June 30, September 30, December 31) make and file a return for the preceding quarter, on forms prescribed by the Fiscal Officer, showing the receipts from furnishing lodging, the amount of tax due from the operator to the Village for the period of time covered by the return, and such other information as the Fiscal Officer deems necessary for the proper administration of this Chapter. The Fiscal Officer may extend the time for making and filing returns for good cause shown. Returns

shall be filed by delivering or mailing same to the Fiscal Officer together with payment of the full amount of tax shown to be due thereon.

(C) All claims for exemptions from tax filed by transient guests with the operator during the reporting period shall be filed with the return.

(D) All returns and payments submitted by each operator shall be treated as confidential by the Fiscal Officer and shall not be released by him or her except upon order of a court of competent jurisdiction or to an officer or agent of the United States, state of Ohio, county of Lake, or Village of Madison, for authorized official use.

(E) If for any reason an operator shall cease to do business in the Village, all returns and payments are due immediately upon cessation of business.

(F) All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the Village of Madison until payment thereof is made to the Fiscal Officer.

182.06 PENALTIES AND INTEREST.

(A) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty equal to ten (10%) percent of the amount of the tax, in addition to the tax.

(B) Continued Delinquency. Any operator who fails to remit any delinquent remittances on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty equal to ten (10%) percent of the amount of the tax and previous penalty in addition to the tax and the ten (10%) percent penalty first imposed. An additional penalty equal to ten (10%) percent of the total tax and penalty of the previous thirty (30) day period shall be added for each successive thirty (30) day period that account remains delinquent.

(C) Fraud. If the Fiscal Officer determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (A) and (B) of this section.

(D) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one (1%) percent per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(E) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing or appeal.

(F) Abatement of Interest and Penalty. In cases where returns were filed in good faith, and an assessment has been paid within the time prescribed by this chapter or where otherwise allowed within the Fiscal Officer's discretion, then the Fiscal Officer may abate any charge of penalty or interest, or both.

182.07 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY FISCAL OFFICER.

If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Fiscal Officer shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Fiscal Officer shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Fiscal Officer shall give notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at its last known place of business. Such operator may within ten (10) days after serving or mailing of such notice make application in writing to the Fiscal Officer for a hearing on the amount assessed.

If an application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Fiscal Officer shall become final and conclusive and immediately due and payable. If such application is made, the Fiscal Officer shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest, and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest, and penalties should not be so fixed. After the hearing, the Fiscal Officer shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in § 182.08.

182.08 APPEAL.

Any operator aggrieved by any decision of the Fiscal Officer with respect to the amount of the tax, interest, and penalties, if any, may appeal to the Local Board of Tax Review by filing a notice of appeal with the Board within fifteen (15) days of the serving or mailing of the determination of tax due. The Board shall fix a time and place for hearing the appeal, and shall give notice in writing to such operator at its last known place of business. The findings of the Board shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon service of notice.

182.09 RECORDS.

Each operator shall keep complete and accurate records of lodging furnished, together with a record of tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices, and such other pertinent documents. If the operator furnished lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was not exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be open during business hours for inspection by the Fiscal Officer, or his or her agents, and shall be preserved for a period of four (4) years, unless the Fiscal Officer, in writing, consents to their destruction within that period, or by any order requesting that such records be kept for a longer period of time.

182.10 REFUNDS.

(A) Whenever the amount of tax, interest, or penalty has been overpaid, or paid more than once, or has been erroneously or illegally collected or received by the Village under this chapter, it may be refunded as provided in subsections (B) and (C) of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Fiscal Officer within three (3) years of the date of payment. The claim shall be made on forms furnished by the Fiscal Officer.

(B) Any operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Fiscal Officer that the person from whom the tax has been collected was not a transient guest; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient guest or credited to rent subsequently payable by the transient guest to the operator.

(C) A transient guest may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the Village, by filing a claim in the manner provided in subsection (A) hereof, but only when the tax was paid by the transient guest directly to the Fiscal Officer, or when the transient guest, having paid the tax to the operator, establishes to the satisfaction of the Fiscal Officer that the transient guest has been unable to obtain a refund from the operator who collected the tax.

(D) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

182.11 ACTIONS TO COLLECT.

Any tax required to be paid by a transient guest under the provision of this chapter shall be deemed a debt owed by the transient guest to the Village. Any such tax collected by an operator which has not been paid to the Village shall be deemed a debt owed by the operator to the Village. Any person owing money to the Village under the provisions of this chapter shall be liable to an action brought in the name of the Village of Madison for the recovery of such amount.

182.12 CONFIDENTIAL REPORTS.

All returns and information relating to the business of any person required to collect and remit the tax imposed by this chapter and coming into possession of the Fiscal Officer, his or her agents and employees, shall be confidential. Any person divulging such information, unless so ordered to do so by a court of competent jurisdiction or to an officer or agent of the United States, state of Ohio, county of Lake, or Village of Madison, for authorized official use, shall be subject to dismissal from service with the Village.

This section shall not operate so as to preclude the use of otherwise confidential information when needed for evidentiary purposes in an action brought pursuant to this chapter for a violation of or to enforce any of its provisions, be same civil or criminal.

182.13 FRAUD.

(A) No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by this chapter to be filed with the Fiscal Officer, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the Village or the Fiscal Officer.

(B) No person shall knowingly present to any operator any false information indicating that the lodging as furnished is not subject to the tax.

182.98 SAVINGS CLAUSE.

If any sentence, clause, section or part of this chapter, or any tax imposed against, or exemption granted pursuant to this chapter, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this chapter so found and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the legislative authority of the Village that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this chapter.

182.99 VIOLATIONS; PENALTY

(A) Whoever violates § 181.13 of this chapter shall be guilty of a misdemeanor of the first degree and shall be subject to the penalties set forth in § 501.99 of the Codified Ordinances of Madison Village for a first degree misdemeanor.

(B) Whoever knowingly violates any provision of this chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the fourth degree on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the first degree and shall be subject to the penalties set forth in § 501.99 of the Codified Ordinances of Madison Village for such misdemeanors.

(C) In accordance with § 501.11 of the Codified Ordinances of Madison Village, it is the intent of this ordinance to impose organizational criminal liability.

(D) The imposition of any other penalties provided herein shall not preclude the Village from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful action, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this chapter or other applicable laws, ordinances, rules, or regulations.