ORDINANCE NO. 35-2007

AN ORDINANCE ENACTING A TRANSIENT GUEST BED TAX IN THE VILLAGE OF MADISON PROVIDING FOR RATE OF TAX, EXEMPTIONS, PENALTIES AND FOR ITS COLLECTION AND ADMINISTRATION.

WHEREAS, Council for the Village of Madison has determined that it is necessary for the operation of the Village government that a tax be levied on overnight lodging of transient guests;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MADISON, COUNTY OF LAKE AND STATE OF OHIO, THAT THE MADISON VILLAGE TRANSIENT GUEST BED TAX BE AND HEREBY IS ENACTED AS FOLLOWS:

SECTION 1: DEFINITIONS

For purposes of this chapter, the following words and phrases shall have the following meanings ascribed to them respectively:

(a) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which 5 or more rooms are used for the accommodation of guests, whether the rooms are in one or several structures.

(b) "Bed & Breakfast Inn" means a residential structure in which 2 or more rooms are available to paying guests and are lodged on an overnight basis. The guests may be served breakfast in connection with their lodging.

(c) "Occupancy" means 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 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 to 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 the room or suite of rooms for dwelling, lodging, or sleeping purposes.

(d) "Operator" means the person who is proprietor of the hotel or bed and breakfast, whether in the capacity of owner, lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his 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 his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
(e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

(f) "Rent" means the consideration received for occupancy valued in money, whether received in money 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.

(g) "Transient guest" means persons occupying a room or rooms for sleeping accommodations for less than 30 consecutive days.

(h) "Village Tax Administrator" means the Village Tax Administrator of the Village of Madison or his agents, employees or designees.

SECTION 2: RATE OF TAX

The Village of Madison agrees to create a Transient Guest Bed tax, the rate of tax as follows: Commencing on January 1, 2008 for the purpose of providing revenue with which to meet the needs of the Village for general operating expenses, there is levied a tax of 3% on all rents received by a hotel or bed and breakfast for lodging 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 Village Tax Administrator may require that the tax be paid directly to the Village; and

SECTION 3: 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 of $5.00 a day or less

(b) No exemption claimed under subsections (a)(1) or (2) hereof shall be granted except upon a claim therefore made at the time rent is collected, and, under penalty of perjury, upon a form prescribed by the Village Tax Administrator. All claims of exemption under subsection (a)(3) hereof shall be made in the manner prescribed by the Village Tax Administrator.
SECTION 4: TAX TO BE SEPARATELY STATED AND CHARGED

(a) The tax to be collected shall be stated and charged separately from the rent, and shown separately on any record thereof, at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy, or any bill or statement or charge made for an 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, 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.

SECTION 5: REGISTRATION

Within 30 days after the effective date of this chapter, or within 30 days after commencing business, whichever is later, each operator of any hotel or bed and breakfast renting lodging to transient guests shall register the hotel or bed and breakfast with the Village Tax Administrator and obtain from him a "transient occupancy registration certificate." The certificate shall, among other things, state the following:
(a) The name of the operator
(b) The address of the hotel or bed and breakfast
(c) The date upon which the certificate was issued;
(d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the transient occupancy tax chapter by registering with the Village Tax Administrator for the purpose of collecting from transient guests the transient occupancy tax and remitting said tax to the Village Tax Administrator. This certificate does not constitute a permit"

SECTION 6: REPORTING AND REMITTING

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Village Tax Administrator, make a return to the Village Tax Administrator, on forms provided by him, of the total rents charged and received, and the amount of tax collected for transient occupancies. All claims for exemption from the tax filed by occupants with the operator during the reporting period shall be filed with the report. At the time the return is filed, the full amount of the tax collected shall be remitted to the Village Tax Administrator. The Village Tax Administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information in the return if the information is pertinent to the collection of the tax. Returns and payments
are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the Village until payment thereof is made to the Village Tax Administrator. All returns and payments submitted by each operator shall be treated as confidential by the Village Tax Administrator, and shall not be released by him except upon order of a court of competent jurisdiction, or to an officer or agent of the United States, the State of Ohio, the county of Lake or the Village of Madison, for official use only.

SECTION 7: PENALTIES AND INTEREST

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

(b) Fraud. If the Village Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to 25% of the amount of the tax shall be added thereto in addition to the penalties stated in subsection (a) hereof.

(c) 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 1% 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.

d) 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

(e) Abatement of Interest and Penalty. In cases where a return has been filed in good faith, and an assessment has been paid within the time prescribed by the Tax Administrator, then the Administrator may abate any charge of penalty or interest, or both.

SECTION 8: FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY VILLAGE TAX ADMINISTRATOR

If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax, or any portion thereof required by this chapter, the Village Tax Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Village Tax Administrator shall procure such facts and information 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 a report and remittance, he shall proceed to determine and assess against the operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Village Tax Administrator 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 his last known place of address. The operator may within 10 days after the serving or mailing of the notice make application in writing to the Village Tax Administrator 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 Village Tax Administrator, shall become final and conclusive, and immediately due and payable. If an application is made, the Village Tax Administrator shall give not less than 5 days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for the tax, interest, and penalties. At the hearing, the operator may appear and offer evidence why the specified tax, interest, and penalties should be so fixed. After the hearing, the Village Tax Administrator shall determine the proper tax to be remitted, and shall give written notice to the person in the manner prescribed herein of the determination and the amount of the tax, interest, and penalties. The amount determined to be due shall be payable after 15 days, unless an appeal is taken to Council.

SECTION 9: APPEAL

Any operator aggrieved by any decision of the Village Tax Administrator with respect to the amount of the tax, interest, and penalties, if any, may appeal to the Madison Village Council by filing a notice of appeal with the Village Tax Administrator within 15 days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing the appeal, and shall give notice in writing to the operator at his last known place of address. The findings of the Village Council shall be served upon the appellant in the manner prescribed above for service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

SECTION 10: RECORDS

It shall be the duty of every operator liable for the collection and payment to the Village of any tax imposed by this chapter to keep and preserve, for a period of 3 years, all records as may be necessary to determine the amount of tax as he may have been liable for the collection of and payment to the Village, which records the Village Tax Administrator shall have the right to inspect at all reasonable times.

SECTION 11: REFUNDS

(a) Whenever the amount of any 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) hereof, provided a claim in writing therefore, stating, under penalty of perjury, the specific grounds upon which the claim is founded, is filed with the Village Tax Administrator within 3 years of the date of payment. The claim shall be on forms furnished by the Village Tax Administrator;
(b) An 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 Village Tax Administrator 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 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 Village Tax Administrator, or when the transient guest, having paid the tax to the operator, establishes to the satisfaction of the Village Tax Administrator 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 right thereto by written records showing entitlement thereto.  

SECTION 12: ACTIONS TO COLLECT

Any tax required to be paid by a transient guest under the provisions of this chapter shall be deemed a debt owed by the transient guest to the Village. Any 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 the amount.

SECTION 13: CONFIDENTIAL REPORTS

All returns and information relating to the business of any other person required to collect or remit the tax imposed by this chapter and coming into the possession of the Village Tax Administrator, his agents and employees, shall be confidential. Any person divulging such information unless ordered to do so by a court of competent jurisdiction shall be subject to a fine or penalty of not more than five hundred dollars ($500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the Village who violates the provisions of this section relative to disclosure of confidential information shall be immediately dismissed from the service of the Village.

SECTION 14: PENALTY

(a) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and shall be punishable therefore by a fine of not more than $500, or by imprisonment for a period of not more than 6 months, or both.

(b) Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Village Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person, required to make, render, sign, or verify any report
or claim, who makes a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor, and is punishable as aforesaid.

SECTION 15: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberation of this council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 16: That this Ordinance shall take effect at the earliest time allowed by law.

PASSED: 8-20-2007

SPONSORED BY:

Mr. Ronald Bartlett
Councilman

ATTEST:

Brenda Brack - Fiscal Officer

Michael Evangelista - Mayor

Mr. Ray Earle
Councilman