CLEVELAND HEIGHTS

Finance Committee
March 18, 2024
5:00 PM
City Hall – Executive Conference Room

Appropriations, Assessment Programs, Bond Issues, Budget, Contractual Service Agreements, Levies, Municipal Court Budget Review, Notes, Equipment & Capital Improvements, Parking Rates & Regulations, Financial Reporting, and as otherwise assigned by the President of Council.

Council members

Chair: Gail Larson | Vice Chair: Anthony Mattox Jr. | Member: Janine Boyd

Agenda

1) **Call to Order/Roll Call**

2) **Legislation Referred to Committee**

   a. **RESOLUTION NO. 190-2023(HB):** ***Third Reading as Amended.*** An Ordinance adopting and enacting new Chapters 769, *Short-Term Rentals*, and 161, *Transient Occupancy Tax.*

   Introduced by President Cuda*

   **Please refer to the highlighted sections in the document included in the packet for this meeting. The Finance Committee will be discussing the portions of this legislation that deal with the Excise Tax proposed. This Ordinance was originally introduced by President Cuda in November, 2023.*

3) **Other**

4) **Adjourn**

Proposed: 11/20/2023

ORDINANCE NO. 190-2023(HB), *Third Reading as Amended*

By President Cuda

An Ordinance adopting and enacting new Chapters 769, *Short-Term Rentals*, and 161, *Transient Occupancy Tax.*

WHEREAS, advances in technology have allowed for a booming online short-term rental industry that connects and serves the needs of many potential renters desiring short-term rentals; and

WHEREAS, this unique business model is unlike hotels and other lodgings in that it appeals to homeowners, apartment dwellers, families of hospital patients, temporary workers, concertgoers, etc.; and

WHEREAS, the City does not currently differentiate its certificate of occupancy permitting for rentals of 30 days or more from rentals that are between 1 and 29 days; and

WHEREAS, on one hand short-term rentals offer supplemental income for Cleveland Heights residents as well as a chance to increase tourism and provide access to our City and a showcase of our neighborhoods for people who might not otherwise visit; and

WHEREAS, on the other hand, the City has received complaints from neighbors of short-term rental properties who have had to endure repeated noise violations, parking problems, and a lack of civility and respect for the impacted neighborhood such that, at times, those short-term rental properties have caused a public nuisance that has threatened the health, safety, quiet enjoyment, and welfare of the residents of the City; and

WHEREAS, the City seeks to ensure that short-term rentals are meeting all of the City's existing minimum standards including all building, housing, zoning and fire codes as well as safety and sanitation requirements; and

WHEREAS, City Council seeks to strike a balance between property owners' right to use their properties as they see fit and the accountability that goes along with short-term rentals.

NOW THEREFORE, BE IT ORDAINED by Council of the City of Cleveland Heights, Ohio, that::

SECTION 1. This Council hereby adopts and enacts a new Chapter 769, *Short-Term Rentals,* of Part Seven, *Business Regulation Code,* of the Codified Ordinances of the City of Cleveland Heights, with said Chapter 769 to read as follows:

SECTION 769.01 DEFINITIONS

For the purpose of this chapter the words and phrases defined in this section shall have the meanings respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(a) "Hosting Platform" means a person or entity that provides a means through which short-term rentals are offered, listed, advertised, solicited, or otherwise held out for rent.

(b) "Operator" means any person who offers a short-term rental or holds a short-term rental out to the public for rental by placing advertisements or solicitations with a hosting platform.

(c) "Person" shall mean 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.

(d) “Responsible Person” means:

(1) A natural person;

(2) Designated by the operator of a short-term rental as having the duty, responsibility, and authority to operate, maintain, and manage the short-term rental;

(3) Whose principal residence or principal place of business is located no greater than fifty miles from the short-term rental.

(e) "Short-Term Rental" means:

(1) Any residential dwelling unit or part thereof;

(2) Offered or held out to the public for rent on a hosting website, web or mobile application, or other online or virtual platform through which short-term rentals are listed, advertised, solicited, or otherwise held out for rent;

(3) For a duration of occupancy of less than thirty consecutive days.

(f) "Transient guest" shall mean a person or persons who enters into a contractual arrangement with the operator of a short-term rental whereby the person or persons pays rent to the operator, or to a person designated by the operator to receive rent, in exchange for occupancy of the short-term rental.

(1) This chapter applies to all short-term rentals located within the city of Cleveland Heights, including those short-term rentals operated prior to the effective date of this ordinance, and all operators and hosting platforms conducting business in the city of Cleveland Heights. This chapter shall have prospective application and shall not impair or modify the terms of any agreement executed or in effect prior to the effective date of this chapter providing for the occupancy of a short-term rental by a transient guest to the extent that the provisions of such agreement conflict with the provisions of this chapter.

(2) This chapter shall not apply to any transient use of property otherwise regulated by specific provisions of the Cleveland Heights Codified Ordinances. The owners and persons responsible for such property regulated by provisions other than this chapter shall comply with any local tax requirements applicable to those uses of such property and, if a local tax is applicable, then such owners and responsible persons shall not pay or allow a short-term rental platform to collect the short-term rental excise tax

established in Chapter of the Cleveland Heights Codified Ordinances. Those uses of property regulated by specific provisions of the Cleveland Heights Codified Ordinances outside of this chapter include, but are not limited to, the following uses of property:

(g) "Hotel" as defined in Section 1341.17; or

(h) “Lodging House" as defined in Section 1103.03(b)(65).

SECTION 769.02 REGISTRATION REQUIREMENTS.

(a) All operators must register their short-term rentals with the city pursuant to Section 769.03, "Short-Term Rental Registration," prior to their operation. No person shall operate or permit the operation of a short-term rental without first registering the short-term rental with the city.

(b) Registration obtained pursuant to this section must be maintained according to the provisions of this chapter during any period of operation as a short-term rental.

(c) Registration of a property under this Chapter shall be distinct from rental registration under Chapter 1347 of this Code.

SECTION 769.03 SHORT-TERM RENTAL REGISTRATION

(a) All short-term rentals shall be registered in the manner prescribed by the Mayor or his or her designee, which shall include the payment of a registration fee as necessary to recover the cost and expense of administering the city's short-term rental program.

(b) The registration of a short-term rental shall require the following information:

(1) A current street mailing address, contact phone number, emergency contact phone number, and email address for the operator and the responsible person designated for the short-term rental. The operator of a short-term rental shall be the person designated to receive legal notice from the city related to operation of the short-term rental.

(2) A current list of all hosting platforms through which the short-term rental is listed, advertised, solicited, or otherwise held out for rent and those through which it is reasonably anticipated to be listed, advertised, solicited, or otherwise held out for rent.

(3) A certification from the operator that the operator is the legal owner or tenant of the short-term rental unit with the right and authority to operate the unit as a short-term rental.

(4) A certification from the operator that the operator has read and, to the best of his, her, or its knowledge, the short-term rental is in conformity with:

(A) Cleveland Heights Codified Ordinance Chapter 749, *Unlawful Practices*, including Section 749.04, *Unlawful Discriminatory Housing Practices,* and Section 749.15, *Unlawful Discriminatory Public Accommodation Practices.*

(B) Building codes, including, as applicable, the Ohio Building Code, the Residential Code of Ohio, and the Cleveland Heights Building Code;

(C) Zoning codes, including, as applicable, the Cleveland Heights Zoning Code and Land Development Code;

(D) Housing codes, including the Cleveland Heights Housing Code; and

(E) Fire codes, including the Cleveland Heights Fire Code and the Ohio Fire Code.

(5) Proof that the operator of the short-term rental is current on all existing tax and utility payment liabilities to the city, including payment of the short-term rental excise tax.

(6) An acknowledgment that the operator understands that the short-term rental must at all times maintain compliance with applicable federal, state, and local laws, regulations, ordinances, or other rules or codes governing the operation of the short-term rental.

(7) An acknowledgement that Fair Housing Act training sessions are regularly available in the Cleveland Heights area and that the city administration will include operators of short-term rentals on the distribution list for notifications about upcoming Fair Housing Act training sessions.

(c) The Mayor or his or her designee shall review each registration application and shall issue a registration and a unique registration number to the operator of the short-term rental unit upon finding the application satisfies all the requirements of this chapter.

(d) The Mayor or his or her designee shall notify the applicant of a final determination on an application no later than thirty days following receipt of a complete application submission. All application denials shall be in writing and shall set forth specific reasons for the denial.

(e) Each short-term rental registration shall be valid for three years from the date of issuance.

SECTION 769.04 STANDARD CONDITIONS OF SHORT-TERM RENTAL REGISTRATION

All short-term rentals registered with the City shall be subject to the following standard conditions:

(a) All information associated with the registration must be updated within seven days of a change in status, including any changes in the contact information for the operator and the responsible person, and further must be verified no less often than triennially when the registration is renewed.

(b) All listings, advertisements, or solicitations offering a short-term rental for rent shall include its registration number.

(c) The operator shall prominently display the short-term rental registration at the entrance inside the short-term rental unit.

(d) The operator shall prominently display an advisory adjacent to the short-term rental registration, which advisory shall be in the form prescribed by the Mayor or his or her designee and shall indicate the contact information for the responsible person, the contact information for the police department and fire department that serve the area in which the short-term rental is located, the location of all means of egress from the short-term rental, and a list activities and behaviors prohibited by city law that tend to be associated with the operation of short-term rentals.

(e) The short-term rental shall be maintained and operated in accordance with applicable building codes, zoning codes, housing codes, fire codes, and the provisions of this chapter.

(f) The operator of the short-term rental must remain current on all existing tax liabilities to the city, including payment of the short-term rental excise tax.

(g) Proof of liability insurance for the short-term rental unit in an amount equal to Five Hundred Dollars ($500,000.00) per occurrence. Insurance provided by hosting platforms may be used to satisfy this requirement.

SECTION 769.05 SHORT-TERM RENTAL REGISTRATION RENEWAL

(a) All operators shall apply to renew their short term rental registration no earlier than one hundred eighty days and no later than sixty days before its expiration date. If an operator fails to apply for renewal as provided herein, he, she, or it must apply for a new registration rather than a renewal.

(b) All short-term rental registration renewals shall be made in the manner prescribed by the Mayor or his or her designee, which shall include the payment of a Renewal fee as necessary to recover the cost and expense of administering the city's short-term rental program.

(c) The Mayor or his or her designee shall review each renewal application and shall issue a renewal upon finding compliance with all the conditions of short-term rental registration established in this chapter as applicable.

SECTION 769.06 DENIAL OF APPLICATION FOR NEW OR RENEWAL REGISTRATION

(a) The Mayor or his or her designee may deny any application for a new or renewal registration if any of the following are true of the application, applicant, owner, operator, or property:

(1) The applicant failed to provide all required application materials or to pay the application fee.

(2) Any registration associated with the operator making the application or for the short-term rental that is the subject of the application is currently revoked or suspended as of the date of the application.

(3) The applicant, operator, or owner of the short-term rental is delinquent in the payment of existing tax and utility payment liabilities to the city, including payment of the short-term rental excise tax.

(4) The applicant has made a material misrepresentation of fact on the application.

(5) The applicant, operator, or owner of the short-term rental is shown to have been engaged in the act of prostitution or soliciting for prostitution, or an act that would constitute a violation of the Ohio Revised Code Chapters 2925 or Chapter 533 of the Codified Ordinances, on the premises of the short-term rental in question, or any short-term rental in which that individual has any interest, including but not limited to ownership or operation.

(6) The applicant, operator, or owner of the short-term rental has failed to make a good faith effort to correct violations of this chapter or has obstructed or interfered with correction of the violations.

(7) The short-term rental premises are subject to outstanding orders from a City department that have not been corrected.

(8) The short-term rental premises have been declared a chronic nuisance pursuant to Cleveland Heights Codified Ordinance Chapter 553.

(b) The Mayor or his or her designee may deny any application for a new or renewal registration if any of the following are shown to have occurred at the short-term rental:

(1) A pattern of felony drug related activity, as defined in Ohio Revised Code Section 2923 .31, exists at the short-term rental.

(2) A pattern of prostitution related activity or evidence of human trafficking, as defined in Ohio Revised Code Section 2923 .31, exists at the short-term rental.

(3) A pattern of criminal gang activity, as defined in Ohio Revised Code Section 2923 .41, exists at the short-term rental.

(4) A documented history of repeated offenses of violence as defined in Ohio Revised Code Section 2901.01, exists at the short-term rental.

(c) Evidence of criminal conduct under subsections (a) and (b) of this section need only be that of de facto violation of law; evidence of conviction is not a prerequisite for denial unless specifically indicated.

SECTION 769.07 AVOIDANCE OF NUISANCES

No short-term rental may be operated within the city so as to cause a nuisance. For the purposes of this section, three or more written citations or notices of violation for one or more of the following behaviors by transient guests of the short-term rental in and around the vicinity of the short-term rental in any one-year period shall establish a rebuttable presumption that a short-term rental has been operated in a manner that causes a nuisance:

(a) Incidents constituting a nuisance as defined by Cleveland Heights C.O. Chapter 553.

(b) Incidents of failure to maintain noise standards per Cleveland Heights C.O. Chapter 509.

(c) Incidents of exceeding the maximum occupancy levels permitted pursuant to applicable building codes, housing codes, and fire codes.

(d) Incidents of illegal parking of vehicles on private property.

(e) Incidents of criminal activity, including littering, trespass, public intoxication, overdose, vandalism, and lewd and lascivious behavior, including one or more of the criminal activities listed in Chapters 527 or 509.

SECTION 769.08 LIMITATIONS ON THE OPERATION OF SHORT-TERM RENTALS

(a) No dwelling unit that receives affordable housing grants or credits from the federal, state, or local governments, or that meets any requirement applicable to the property in which the dwelling unit is located related to such affordable housing grants or credits, shall be registered as a short-term rental.

(b) No building may contain a greater number of short-term rental units than set forth below, and no registration may issue to authorize the establishment of a short-term rental in a building to the extent it would exceed the maximum number of short-term rental units permitted:

(1) For buildings containing four or fewer dwelling units, there is no limit on the number of short-term rentals that may be operated in the building.

(2) For buildings containing five or more dwelling units, four short-term rentals plus one additional short-term rental for every four dwelling units in excess of four dwelling units is permitted.

(3) For buildings containing dwellings units used as short-term rentals on or before the effective date of this Ordinance, the greater of (i) the number of short-term rentals permitted under subsections (b)(l) and (b)(2), as applicable; or (ii) the number of units used as short-term rentals prior to the effective date of this Ordinance.

(c) The number of short-term rental registrations issued for a building shall be calculated on a first applied, first approved basis.

(d) The limitations established in this section do not alter existing obligations under the Cleveland Heights Building Code, Zoning Code, Fire Code, or Health Code and other applicable building, housing, or residential codes.

(e) "Owner-occupied short-term rental" means a short-term rental in which the owner resided for at least 270 days in the prior calendar year. Short-term rentals which do not qualify as owner-occupied short-term rentals may be rented for periods of not less than seven (7) nor more than twenty-nine (29) consecutive days but may in no event be rented for periods of less than seven (7) days.

(f) No short-term rental may be rented for more than twenty-nine (29) days in a period of two consecutive months.

SECTION 769.09 LIMITATIONS ON INSPECTIONS

No person charged with enforcing this chapter shall enter upon a private premises to conduct an inspection unless it is conducted in the same manner required of city building inspectors. Failure to permit an initial or complaint inspection shall be grounds for refusing or repealing a short-term rental license.

SECTION 769.10 EXCISE TAX

All operators of short-term rentals shall pay, or shall cause any hosting platform on which their short-term rental is rented to pay on their behalf, the short-term rental excise tax established in Chapter of the Cleveland Heights C.O. Chapter 161 Hosting platforms shall be independently responsible for ensuring that the short-term rental excise tax is withheld and paid.

SECTION 769.11 SHORT-TERM RENTAL HOSTING PLATFORM OBLIGATIONS

(a) All hosting platforms through which short-term rentals within the city are listed, advertised, solicited, or otherwise held out for rent shall provide the following information to the Mayor or his or her designee on a quarterly basis:

(1) The total number and location of short-term rentals listed on the platform during the applicable reporting period;

(2) The total number of nights that each listing on the platform was rented to guests during the applicable reporting period; and

(3) The total amount of tax collected and remitted by the hosting platform to the city during the applicable reporting period.

(b) All hosting platforms through which short-term rentals within the city are listed, advertised, solicited, or otherwise held out for rent shall provide a field on the platform to allow operators to input short-term rental registration numbers.

SECTION 769.12 SUSPENSION, REVOCATION AND PENALTIES

Failure to comply with the conditions of operating a short-term rental established in this Chapter, existence of any of the grounds for denial of application established in Section 769.01of this Chapter, or allowing a nuisance to exist at the short-term rental as described and defined in Chapter 553 of this Chapter, may result in the suspension or revocation of a short-term rental registration as follows:

(a) The Mayor may suspend a registration if an operator fails to bring its short-term rental into compliance with this Chapter within fifteen days following the issuance of written notice of a violation. An operator may not operate the short-term rental associated with the registration or hold it out for rent during a period of suspension.

(b) The Mayor or his or her designee shall reinstate a suspended registration once the operator restores its short-term rental to compliance with the provisions of this Chapter and pays a reinstatement fee as necessary to recover the cost and expense of administering the city's short-term rental program registry with respect to the property.

(c) The Mayor may revoke a registration if an operator fails to bring its short-term rental into compliance with the conditions established in this chapter within thirty days following the issuance of written notice of a violation. An operator may not operate the short-term rental associated with the registration or hold it out for rental during a period of revocation.

(d) Prior to or following a suspension or revocation, an operator may provide proof to the Mayor or his or her designee establishing to the satisfaction of the Mayor or his or her designee that the short-term rental did not operate in violation of the provisions of this chapter cited as the reason for the suspension or revocation, in which case the registration shall be reinstated without the payment of a reinstatement fee.

(e) Prior to or following a suspension or revocation, an operator may provide a plan to the Mayor or his or her designee to achieve substantial compliance with a provision of this chapter when achieving strict compliance with the provision would impose practical difficulties. If the Mayor or his or her designee determines the plan is viable and accomplishes the spirt and intent of the provision it is designed to address, then the execution of the plan shall constitute compliance with the provision at issue.

(f) Except as provided in subsection (a)(4), a registration may not be reinstated for twelve months following its revocation date, and the short-term rental associated with a revoked registration may not be operated as a short-term rental during the twelve-month waiting period. In addition, no operator associated with a revoked registration and no natural person with authority to exercise control over the operator or holding an ownership interest or beneficial interest in the operator may apply for a new registration for a short-term rental during the same twelve-month period.

SECTION 769.13 APPEALS

Any person who has a bona fide controversy with the application or enforcement of this chapter and who has been adversely affected by the decision may appeal the decision to the city's Board of Appeals pursuant to Section 701.07 of the Codified Ordinances by filing a notice of appeal with the office no later than thirty days after written notice of the decision is mailed to the person. An appeal shall not operate to stay the suspension or revocation of a short-term rental registration.

SECTION 769.14 SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter or any part thereof. This Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

SECTION 769.99 PENALTY

A violation of the provisions of this Chapter shall be punishable by a fine not exceeding Five Hundred Dollars ($500.00). Any such violation shall constitute a separable offense on each day continued.

SECTION 2. This Council hereby adopts and enacts a new Chapter 161, *Excise Tax,* of Part One, *Administrative Code*, of the Codified Ordinances of the City of Cleveland Heights, with said Chapter 161 to read as follows:

SECTION 161.01 INTENT OF TAX

It is the intent of the City to levy an excise tax of three percent (3%) on transaction by which lodging is or is to be furnished by a hotel or short-term rental to transient guest as referred to and authorized by RC 5739.02(C). Accordingly, this Chapter shall be construed to effectuate that purpose and so as to be consistent with any requirement of law, compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.

SECTION 161.02 DEFINITIONS

As used in this Chapter:

(a) "Administrator" means the Director of Finance or his or her authorized representative.

(b) "Booking agent" means any person or entity that facilitates reservations of collects payment for hotel or short-term rental accommodations on behalf of or for a vendor. Merely publishing an advertisement for accommodations does not make the publisher a booking agent.

(c) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where lodging is offered to guests in one (1) or more rooms, regardless of the use of keyed entry, whether such rooms are in one (1) or several structures, and whether the rooms are located in different structures or on different parcels of land if the structures are not identified in advertisements of the accommodations as distinct establishments. For the purposes of this Chapter, "hotel" includes short term rentals as defined in Chapter 769 of these Codified Ordinances.

(d) "Transaction price" means the total amount of consideration, including money or any other value, paid or to be paid or given by, or on behalf of, a transient guest to a hotel or booking agent in exchange for lodging. The transaction price is the amount advertised or published to the public inclusive of any mandatory fees built into the advertised or published price; however, service fees or booking fees, if separately stated, shall not be included in the transaction price.

(e) "Transient guest" or "transient guests" means a person or persons occupying a room or rooms for lodging for less than thirty (30) consecutive days.

(f) "Vendor" means the person who is the owner or operator of the hotel and who furnishes the lodging.

SECTION 161.03 PURPOSE, RATE, AND APPLICATION OF TAX

(a) There is hereby levied an excise tax of three percent on transactions by which lodging by a hotel is, or is to be, furnished to transient guests.

(b) The excise tax levied under this Chapter shall provide revenue for the purposes of general municipal operations, procurement of fixed assets or permanent improvements, payment of debt charges, the elimination of deficits in City funds, and for all other lawful purposes. To carry out such purposes, the receipts of the tax levied under this Chapter shall be deposited to the credit of the General Fund.

(c) The tax, which shall be known as the transient occupancy tax, applies to an is collectible at the time lodging is furnished, regardless of the time when the price is paid. The tax shall not apply to transactions by which lodging is furnished to:

(1) the Federal government, or the State or any of its political subdivisions; or

(2) a person maintaining occupancy for a period of thirty (30) or more consecutive days; provided, however, that except in the case of employees of the same employer, no occupancy many be used in combination with the occupancy of another, regardless of the source of payment, to exempt a transaction under this division.

(d) For the purpose of the proper administration of this Chapter and to prevent evasion of the tax, it shall be presumed that all lodging furnished by hotels in the City to transient guests is subject to the tax until the contrary is established.

SECTION 161.04 TRANSIENT GUEST TO PAY THE TAX

(a) The transient occupancy tax shall be paid by the transient guest to the vendor unless division (b) of this Section applies. Each vendor shall collect from the transient guest the full and exact amount of the tax payable on the taxable price for each taxable lodging. The tax required to be collected under this Chapter shall be deemed to be held in trust by the vendor of the City until paid to the Administrator, as provided in

Section 161.07 of this Chapter. If for any reason the tax when due is not paid to the vendor, the Administrator may require the transient guest to pay such tax directly to the Administrator.

(b) A booking agent collecting for a vendor may collect and remit the transient occupancy tax, and the vendor shall not be responsible for collecting the transient occupancy tax on any transaction for which the vendor has received confirmation that the booking agent has collected and remitted the tax.

(c) No exemption shall be granted except upon a claim therefor made at the time lodging is furnished and, under penalty of perjury, upon a form and in the manner prescribed by the Administrator.

SECTION 161.05 RECORDS INSPECTION AND PRESERVATION

Each vendor and booking agent shall maintain complete and accurate records of lodging furnished, together with a record of the tax collected thereon. Such records shall be open and accessible to the inspection of the Administrator of the City within fifteen (15) days upon notification in writing to the vendor or booking agent and shall be preserved for a period of three (3) years, unless the Administrator in writing consents to their destruction within that period, or by order requires that they be kept longer.

SECTION 161.06 TAX TO BE SEPARATELY STATED AND CHARGED

(a) The vendor or booking agent collecting for a vendor shall state and charge the transient occupancy tax to the transient guest separately from the charge for the lodging and 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 occupancy issued or delivered by the vendor.

(b) No vendor or booking agent 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 vendor or booking agent, or that the tax will not be added to the amount charged for the lodging, or that, if added, any part will be refunded except in the manner provided in this Chapter.

SECTION 161.07 REGULATIONS FOR FILING RETURNS

(a) Each vendor or booking agent collecting for a vendor shall on or before the last day of the month make and file a return for the preceding month, on forms prescribed by the Administrator, showing the receipts from furnishing lodging, the amount of tax due from the vendor or booking agent collecting for a vendor to the City for the period covered by the return, and such other information as the Administrator deems necessary for the proper administration of this Chapter. All returns shall be signed by the vendor, its authorized agent, or booking agent collecting for a vendor. The Administrator may extend the time for making and filing returns. Returns shall be filed by delivering or mailing the same to the Administrator together with payment of the full amount of tax shown to be due thereon.

(b) The Administrator may authorize vendors or booking agents collecting for vendors whose tax liabilities are not such as to merit monthly returns, as determined by the Administrator on the basis of administrative costs of the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

(c) Each vendor or booking agent collecting for a vendor shall file all claims for exemption from tax filed by transient guests with the vendor during the reporting period with the return.

(d) The Administrator shall treat all returns and payments submitted by vendors and booking agents collecting for vendors as confidential and shall not release theme except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State, the County, the City, for official use only, or as required by law.

(e) The Administrator, if he or she deems it necessary in order to ensure the payment of the tax imposed by this Chapter, may require returns and payments to be made and filed for periods longer or shorter than a month.

SECTION 161.08 REFUNDS

The Administrator shall refund or grant credits to vendors of booking agents collecting for vendors for the amount of tax paid illegally or erroneously or erroneous assessment where the vendor or booking agent has not reimbursed itself from the transient guest. As between a vendor and a booking agent, the request for refund shall be made by the party that filed the return containing the illegal or erroneous assessment. A transient guest may obtain a refund or credit for the amount of taxes paid illegally or erroneously, but only when the tax was paid by the transient guest directly to the Administrator. No refund shall be paid unless the claimant establishes a right thereto by written records showing entitlement thereto and makes a claim filed within three (3) years of the date of payment in the manner and on forms prescribed and furnished by the Administrator, and stating under penalty of perjury, the specific grounds upon which the claim is made.

SECTION 161.09 FAILURE TO COLLECT AND REPORT TAX; DETERMINATION BY ADMINISTRATOR

(a) If any vendor fails or refuses to collect the transient occupancy tax or to file a return or remit the tax or any portion thereof, as required by this chapter, and the vendor has not received confirmation that a booking agent has collected and remitted the tax, the Administrator shall proceed in such manner as he or she may deem best to obtain information on which to base an assessment of the tax due. When the Administrator has obtained such information as he or she is able, he or she shall proceed to determine and assess against such vendor the tax and penalty provided for in this Chapter.

(b) In case such determination is made, the Administrator shall serve notice upon the vendor of the amount so assessed, either by personal service or by registered or certified mail. Such vendor may, within ten (10) days after the serving or mailing of such notice, apply in writing to the Administrator for a hearing on the correctness of that amount assessed. If the vendor does not apply within the time prescribed, the tax and penalty determined by the Administrator shall become final and conclusive and immediately due and payable. If the vendor makes timely application, the Administrator shall give the vendor written notice not less than five (5) days in advance in the manner prescribed in this section, to show cause at a time and place fixed in the noticed why the amount

specified therein should not be fixed for such tax and penalty. At any such hearing, the vendor may appear and offer evidence why such tax and penalty should not be so fixed.
(c) After such hearing, the Administrator shall determine the proper amount of tax due and shall thereafter give written notice to the vendor in the manner prescribed in this section, of such determination and the amount of tax and penalty. The amount determined to be due shall be payable after fifteen (15) days.

SECTION 161.10 APPEALS

Appeals from any ruling or determination of the Administrator with respect to the amount of such tax and penalty shall be made to a Board of Appeals pursuant created pursuant to Section 701.07 of the Codified Ordinances.

SECTION 161.11 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 City. Any such tax collected by a vendor or a booking agent collecting for a vendor and not paid to the City shall be deemed a debt owed by the vendor or booking agent to the City. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such an amount.

SECTION 161.12 BOOKING AGENTS

(a) Any booking agent that facilitates transactions for one (1) or more hotels in the City and that does not collect or remit the tax on behalf of all the vendors of such hotels, shall provide the City quarterly within thirty (30) days of the end of each calendar quarter a transaction report. The transaction report shall consist of all listings by the vendors during the preceding calendar quarter, including, but not limited to, the dates of occupancy for each lodging and the amount paid for each completed transaction, if any.
(b) Any booking agent that lists one (1) or more hotels in the City shall:
(1) at the time any vendor first lists a hotel with it, notify the vendor of the vendor's tax and license obligations to the City; and
`(2) annually provide all vendors or one (1) or more hotels with a reminder of their tax and license obligations to the City.
In both cases the booking agent shall use language provided or approved by the Administrator.

SECTION 161.13 PENALTIES ON UNPAID TAX

In addition to interest as provided in Section 161.12 hereof, penalties based on the unpaid tax are hereby imposed as follows:

(a) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this Chapter within thirty (30) days after the date required shall pay, in addition to the tax, a penalty equal to ten percent (10%) of the amount of the tax.

(b) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this Chapter within sixty (60) days after the date required shall pay, in addition to the tax, a penalty equal to fifteen percent (15%) of the amount of the tax;

(c) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this Chapter within ninety (90) days after the date required or upon a second delinquency shall pay, in addition to the tax, a penalty equal to twenty percent (20%) of the amount of the tax.

(d) Any vendor or booking agent collecting for a vendor who fails to remit any tax imposed by this Chapter within one hundred twenty (120) days or more or upon a third or later delinquency shall pay, in addition to the tax, a penalty equal to twenty-five percent (25%) of the amount of the tax.

SECTION 161.14 RULES AND REGULATIONS

The Administrator shall have the power to adopt rules and regulations not inconsistent with the terms of this Chapter for carrying out and enforcing the payment, collection and remittance of the transient occupancy tax. A copy of such rules and regulations shall be published on the City's website for at least ten (10) days before they shall become effective. Copies shall be printed and made available in the office of the Administrator.

SECTION 161.99 PENALTY

(a) Any booking agent or vendor who fails to file any return or report required under this Chapter shall be subject to a maximum fine of Two Thousand Dollars ($2,000.00) per occurrence. A separate offense shall be deemed to occur on the first day of each month the failure to file continues.

(b) Whoever violates any other provisions of this Chapter shall be fined not more than Five Hundred Dollars ($500.00).

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance shall take effect and be in force from and after August 1, 2024.

____
TONY CUDA
President of Council

____
ADDIE BALESTER
Clerk of Council

PASSED:

Presented to Mayor: _____________ Approved: _____________________________

____
KAHLIL SEREN
Mayor