

ORDINANCE NO. 21-174

AN ORDINANCE AMENDING PART ONE (ADMINISTRATIVE CODE), TITLE NINE (TAXATION), BY THE ADOPTION OF NEW CHAPTER 189 (PARKING OCCUPANCY TAX) OF THE CODIFIED ORDINANCES, IN THE MANNER AND WAY SPECIFICALLY SET FORTH HEREINBELOW.

WHEREAS, the City Commission enacted a new Chapter 189 (Parking Facility Tax) by Ordinance No. 03-090, passed on April 14, 2003, and then repealed the parking facility tax by Ordinance No. 04-065, passed on February 9, 2004; and

WHEREAS, this City Commission has determined that levying and collecting a tax on parking occupancy in the City is in the best interest of the City and desires to adopt a new parking tax; and

WHEREAS, to provide for additional City services and functions, including improving major roadways and other public infrastructure to promote tourism and economic activity and engaging in economic development and revitalization activities to create and preserve jobs, this City Commission wishes to adopt a parking tax of eight percent; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments of the City of Sandusky, Ohio and, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. Part One (Administrative Code), Title Seven (Boards and Commissions), of the Codified Ordinances of the City be amended by the adoption of new Chapter 189 (Parking Occupancy Tax) as follows:

**CHAPTER 189
PARKING OCCUPANCY TAX**

- 189.01 Title.
- 189.02 Definitions.
- 189.03 Tax Imposed.
- 189.04 Tax Not Paid; Interest; Late Filing Penalty.
- 189.05 Record keeping; Audits.
- 189.06 Finance Director's Authority.
- 189.07 Finance Director's Power and Duties; Apparent Violation.
- 189.08 Credit or Refund; Claim Procedures.
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- 189.10 Responsible Parties.
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- 189.12 Appeals.
- 189.13 Confidential Information.
- 189.14 Effective Date.

- 189.15 Saving Clause.
189.99 Violation; Penalty.

189.01 TITLE.

This chapter shall be known and cited as the “parking occupancy tax chapter” and the tax herein imposed shall be known and cited as the “parking occupancy tax.”

189.02 DEFINITIONS.

(a) For, the purposes of this chapter, when any of the following words or terms are used herein they shall have the meaning or construction ascribed to them in this section:

- (1) “Board of Review” means the Tax Board of Review created pursuant to Section 191.08 of the Codified Ordinances of the City.
- (2) “City” means the City of Sandusky, Ohio.
- (3) “Finance Director” means the Finance Director of the City or their authorized representative.
- (4) “Facility owner” means the person vested with legal title to any parcel of real property, or any portion thereof, that is used as a parking facility.
- (5) “Month” means a calendar month.
- (6) “Motor vehicle” means any motor vehicle as defined in division (B) of ORC § 4501.01.
- (7) “Operator” means any person operating a parking facility or receiving consideration for housing, parking or storing of motor vehicles at a parking facility (including a person operating under a management agreement, lease, or concession agreement).
- (8) “Patron” means any natural person who drives a motor vehicle to, into, or upon a parking facility for the purpose of housing, parking or storing such vehicle for any length of time for a fee, charge or other consideration, regardless of by whom paid, and includes any natural person who has a vehicle in their custody or control taken from him by another for housing, parking or storage at a parking facility.
- (9) “Parking facility” means any building, garage, structure, premises, parking lot or other place, except a public way, within the City, in or on which three or more motor vehicles owned or operated by patrons other than the operator are stored or parked for any period of time for a charge, fee, or other consideration.

- (10) "Parking space" means any space where or in which a single motor vehicle may be parked, housed, stored, or kept at any one (1) time, regardless if that space is designated or designed for such use.
- (11) "Person" means any natural person, partnership, joint venture, joint stock company, corporation, estate, trust, business trust, receiver, administrator, executor, assignee, trustee in bankruptcy, firm, company, association, club, syndicate, society, municipal corporation, the State of Ohio, political subdivision of the State of Ohio, the United States, instrumentality of the United States, or any group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.
- (12) "Tax" means the parking occupancy tax imposed pursuant to Section 189.03.
- (13) "Transaction" means the act of housing, parking or storing a motor vehicle in or on a parking facility for a charge, fee, or other consideration.

189.03 TAX IMPOSED.

(a) For the purposes of providing funds for (i) payment of costs of general municipal operations; (ii) the payment of costs of permanent improvements, including costs of acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, improving, equipping or furnishing facilities by contract, lease, lease-purchase, or otherwise, the elimination of deficits in City funds and the payment of costs of general municipal operations, and (iii) all other lawful purposes, including the payment of lease rentals, lease-purchase amounts, debt charges, deposits to reserves or other funds or other obligations, an excise tax is hereby imposed upon the privilege of housing, storing or parking a motor vehicle in or on any parking facility in the City. Such tax shall be imposed upon the patron for each transaction and shall be in the amount of eight percent (8%) of the charge, fee or other consideration for the transaction. The annual collections shall be used to fund costs of permanent improvements of the City, including the payment of debt charges on any notes or bonds issued to finance such permanent improvements, and thereafter to fund any lawful municipal purposes, including payment of costs of general municipal operations, permanent improvements, and the elimination of deficits in City funds, all subject to provisions governing the collection, investment and disbursement of collections from the tax contained in the proceedings for any bonds, notes, leases, lease-purchase agreements or other obligations issued or incurred for those purposes.

(b) The tax herein imposed is in addition to any other taxes imposed by law on or relating to transactions or the income or gross receipts therefrom.

(c) An operator shall be required to collect the tax at the time the charge, fee, or other consideration for a transaction is collected and to pay it over to the Finance Director as provided in divisions (e) and (f) of this section.

(d) The tax shall not apply to: (1) a parking facility with respect to which the United States government, the State of Ohio, political subdivision of the State of Ohio, or a division or department thereof is an operator; (2) any organization that has been determined by the Internal Revenue Service to be described in Section 501(c)(3) of the Internal Revenue Code; (3) "towing service" operators as defined in Ohio Revised Code § 4513.67(A); or (4) transactions by a resident of a single-family home, multiple-family dwelling unit, apartment, boarding house, condominium, or mobile home for the purpose of parking on-site at that place of residence or at an off-site parking facility under contract to provide parking for residents at that place of residence, provided that the resident utilizes such home, dwelling unit, apartment, boarding house, condominium, or mobile home for living or sleeping purposes for at least thirty (30) consecutive days.

(e) Except as otherwise provided herein, the operator shall remit the tax to the Finance Director on a monthly basis, by the twentieth (20th) day of the month following the month in which the tax has been or should have been collected. A remittance return shall accompany each monthly payment. The format of such remittance return shall be prescribed by the Finance Director, and such return shall include: a) the gross receipts that were collected from transactions during the calendar month; b) the total number of vehicles parked during the month; c) the amount of taxes due; and d) such other pertinent information as the Finance Director deems necessary. The remittance returns shall be filed and signed by the operator under penalty as provided in Section 189.99 of this chapter.

(f) An operator shall be liable for the payment to the Finance Director of the taxes required to be collected, whether or not such taxes have in fact been collected.

189.04 TAX NOT PAID; INTEREST; LATE FILING PENALTY.

(a) Any tax not paid when due shall bear interest at the rate of two percent (2%) per month, or fraction thereof, until paid.

(b) In addition to any interest charges, an operator who fails to make timely payment of taxes shall be subject to a late payment penalty, unless a late filing penalty is due as provided in subsection (c) below, equal to ten percent (10%) of the taxes not paid timely.

(c) In addition to any interest charges, an operator who fails to file a remittance return when due shall be subject to a late filing penalty equal to ten percent (10%) of the taxes reported, or that should have been reported, on the return that is not filed timely.

(d) Any payment or return shall be considered paid or filed, respectively, on the date such payment or return is physically received by the Finance Director.

(e) All payments received shall first be applied to penalty due, then interest due and finally the taxes due for the period for which the payment is made.

(f) The Finance Director may abate all or any portion of the penalty imposed for late payment or late filing if the Finance Director determines that such failure was due to reasonable cause and not willful neglect.

189.05 RECORD KEEPING; AUDITS.

(a) Content of Records. Every operator shall keep separately, with respect to each parking facility operated by such operator, accurate and complete books and records of all transactions. These records shall include:

- (1) a daily record sheet for each day showing:
 - (A) the number of motor vehicles housed, parked or stored on an hourly, daily, weekly, or monthly basis in or on a parking facility;
 - (B) the gross receipts from all transactions; and
 - (C) the taxes due to the City on all transactions.

(b) Retention of Records. All books, records, and daily record sheets shall be retained by each operator for a period of six (6) years subsequent to the year of transaction.

(c) Access to Records. Each operator shall afford the Finance Director and their designated agents access to all such records and evidence at all reasonable times and shall provide verification or authentication of the same, as the Finance Director may require. The Finance Director and their agents are hereby authorized to examine the books, papers and records of any operator or suspected operator in order to verify the accuracy of any return made, or, if no return has been made, to determine the taxes due. Every operator is hereby required and directed to provide to the Finance Director and their designated agents the means, facilities and opportunity to conduct any examinations or investigations as are hereby authorized.

(d) Audits. The Finance Director shall have, at reasonable times during normal business hours, the right to examination and audit of all account books and records of any person responsible for the collection and remittance of the tax herein imposed and levied which, in the Finance Director's opinion, in any way pertain to the parking receipts. This audit is to be made by the Finance Director or by accountants employed by the City and at its own expense. If required by the Finance Director, a complete audit of a person's gross parking receipts shall be provided at the end of each person's fiscal year by an accountant approved by the Finance Director and at the expense of the City. Notwithstanding the foregoing if, as the result of an audit, the Finance Director determines that there shall be an unpaid tax liability for a person equal to or greater than 1% of the person's total liability for the period audited, the Finance Director may require such person to

pay the expenses of the audit.

189.06 FINANCE DIRECTOR'S AUTHORITY.

The Finance Director is hereby empowered to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including, but not limited to, provisions relating to recordkeeping. A copy of the rules and regulations shall be kept on file with the Finance Director and available for inspection upon request.

189.07 FINANCE DIRECTOR'S POWER AND DUTIES; APPARENT VIOLATION.

(a) If it shall appear to the Finance Director that any person has violated any provision of this chapter or any rule or regulation promulgated hereunder, or if the amount of any tax payment is incorrect in that it does not include all taxes payable for a month, or if the Finance Director shall find that the collection of any taxes which have accrued but are not yet due will be jeopardized by delay, and declares said taxes to be immediately due and payable, or if it shall appear to the Finance Director that any final assessment did not include all taxes payable for the periods involved, or if it appears to the Finance Director that any person has, by reason of any act or omission or by operation of law, become liable for the payment of any taxes, interest or penalties not originally incurred by him, the Finance Director may in any of the above events determine and assess the amount of such taxes or deficiency, as the case may be, together with the interest and penalties due and unpaid, and immediately serve notice upon such person of such determination and assessment and make a demand for payment of such taxes, interest and penalties. If the person against whom such assessment is, or could have been, made has died, such assessment may at the discretion of the Finance Director be made against their personal representatives. Such determination and assessment by the Finance Director shall become final upon the expiration of twenty (20) days from the date of the service of such written notice thereof and demand for payment, unless prior to such expiration such person shall have filed with the Finance Director a written protest and a petition for a hearing, specifying its objections thereto. Upon the receipt of such protest and petition, the Finance Director shall fix the time and place for a hearing and shall notify the petitioner thereof. The Finance Director may amend their determination and assessment at any time before it becomes final. In the event of such amendment the petitioner shall be given notice thereof and an opportunity to be heard. At any hearing held as herein provided, the determination and assessment by the Finance Director shall be prima facie correct and the burden shall be upon the petitioner to prove that it is incorrect. Upon the conclusion of such hearing a decision shall be made by the Finance Director either canceling, increasing, modifying or affirming such determination and assessment and notice thereof given to the Petitioner. Such decision shall become final upon the expiration of twenty (20) days from the date notice of the decision is provided to the petitioner, unless prior thereto the petitioner shall have filed an appeal to the Board of Review pursuant to Section 189.12.

(b) Whenever any person shall fail to pay any tax as herein provided, the Law Director shall, upon the request of the Finance Director, bring or cause to be

brought an action to enforce the payment of said tax on behalf of the City in any court of competent jurisdiction.

189.08 CREDIT OR REFUND; CLAIM PROCEDURES.

(a) Whenever it appears that an amount of tax, interest or penalty has been paid to the Finance Director in error, whether such amount be paid through a mistake of fact or an error of law other than an error resulting from the tax, any of its provisions or its application being declared invalid or unconstitutional, not later than three (3) years from the date upon which such payment was made, the person paying such tax (hereinafter referred to as "claimant") may file a claim for credit or refund with the City on forms provided by the Finance Director for that purpose. No credit or refund shall be allowed for any amount paid by any claimant unless such claimant bore the burden of such amount and did not shift the burden to another person.

(b) Any credit or refund that is allowed under this section shall be without interest.

(c) A claim for credit or refund shall be considered to have been filed with the Finance Director on the date upon which it is physically received by the Finance Director and receipt of any claim for credit or refund filed under this section shall be acknowledged by the Finance Director, said receipt to describe the claim in sufficient detail as to identify it, and to state the date upon which the claim was received by the Finance Director.

(d) As soon as practicable after a claim for credit or refund is filed, the Finance Director shall examine the same and determine the amount of credit or refund due, if any, and shall issue a notice of tentative determination of claim and notify the claimant of such determination. If the claimant disagrees with the determination, he shall file a protest and challenge thereto within twenty (20) days after the date of notice of tentative determination of claim has been mailed to him. Upon receipt of such protest within the twenty (20) days allowed, the Finance Director or their designee, shall fix the time and place for a hearing thereof, giving notice to the claimant of, not less than seven (7) days. At any hearing held as herein provided, the tentative determination of claim shall be prima facie correct and the burden shall be upon the claimant to prove that it is incorrect. Upon the conclusion of the hearing, a decision shall be made by the Finance Director and notice thereof given to the claimant. Such tentative determination of claim shall become final upon the expiration of twenty (20) days from the date notice of the determination is provided to the claimant, unless prior thereto the claimant shall have filed an appeal to the Board of Review pursuant to Section 191.08.

189.09 NOTICE.

Unless otherwise provided in this chapter, whenever notice is required by this chapter, such notice may be given by the United States registered or certified mail, addressed to the person concerned at their last known address, and proof of such mailing shall be sufficient for the purposes of this chapter. Notice of any hearing provided for by this chapter shall be given not less than seven (7) days

prior to the date fixed for a hearing. Following the initial contact of a person represented by an attorney, the Finance Director shall not thereafter contact the person concerned but shall only contact the attorney representing the person concerned.

All hearings provided for in this chapter shall be at a location determined by the Finance Director.

189.10 RESPONSIBLE PARTIES.

(a) Agency. Where an operator performs their functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for purposes of this chapter and shall have the same duties and liabilities as their principal. Where the managing agent collects parking occupancy tax on behalf of their principal, such principal shall be jointly responsible for reporting and remitting the tax to the City. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

(b) Joint and Several Liabilities for Tax, Interest, and Penalties.

(1) The operator shall be liable for the payment of all taxes required to be collected under this chapter, including interest and penalties thereon.

(2) Any officer, employee, or agent of an operator subject to the provisions of this chapter who has the control, supervision or responsibility of collecting such tax, filing returns or making payment of the taxes herein imposed who willfully fails to collect the tax, file required returns, or make tax payments when due to the Finance Director shall be jointly and severally liable with the operator for all taxes due under this chapter, including interest and penalties thereon. This personal liability of such officer, employee, or agent shall survive the merger, acquisition, liquidation, or dissolution of the operator.

(3) Any facility owner who knowingly permits its parking facility to be used by an operator in the ordinary course of such operator's parking service shall be jointly and severally liable with the operator for all taxes due under this chapter, including interest and penalties thereon. Any amounts due hereunder shall be reduced to a lien on the parking facility.

189.11 SALE OR TRANSFER; NOTIFICATION PROCEDURES.

An operator who sells or transfers their business of operating one or more parking facilities in the City or a major part of the assets of such business, other than a sale of assets, including inventory, in the ordinary and usual course of such business, must file a notice of such intended sale or transfer with the Finance Director at least forty-five (45) days prior to the date of such sale or transfer, setting forth the name of the seller or transferor, purchaser or transferee, and a description of the property or business sold. Within thirty (30) days after such sale or transfer, such seller shall file any remittance returns and pay any taxes due and not paid up to the date of sale or transfer. At least forty-five (45) days before the closing of the sale or transfer referred to above, the purchaser or transferee

shall also file a notice of intended purchaser or acquisition with the Finance Director, setting forth the same information as required in the seller's or transferor's notice and further requesting that the Finance Director perform an audit of the seller's or transferor's books and records or do whatever is necessary to determine the amount of taxes due up to the date of sale or transfer. The purchaser's or transferee's notice may be made in conjunction with the seller's or transferor's notice. If the purchaser or transferee fails to file the notice as required herein, the purchaser or transferee shall be personally liable to the City for the amount of taxes, interest and penalty owed by the seller or transferor to the Finance Director up to the amount or fair market value of the consideration paid by the purchaser or transferee. Upon the filing of a notice, the Finance Director shall notify both the seller (or transferor) and the purchaser (or transferee) of the amount to be withheld from the purchase or transfer price to cover all taxes, interest and penalties due under this chapter and unpaid up to the date of closing of the sale or transfer. The purchaser or transferee shall withhold this amount from the purchase or transfer price or, if payment of money or property is not involved, shall withhold the performance that constitutes consideration for the sale or transfer until the seller or transferor produces a receipt from the Finance Director showing that such taxes, interest and penalty had been paid or a certificate from the Finance Director showing no taxes are due. The purchaser or transferee is relieved of any duty to withhold from the purchase or transfer price and shall have no liability for taxes, interest or penalty due hereunder from the seller or transferor if the Finance Director fails to notify the purchaser or transferee of such amount claimed due at least five (5) days before the date of such sale or transfer. If the purchaser or transferee is notified by the Finance Director of the amount to be withheld from the purchase or transfer price and does withhold such amount, the purchaser's or transferee's liability for any taxes, interest or penalty hereunder shall be limited to the amount to be withheld as set forth in the notification from the Finance Director. If the purchaser or transferee fails to withhold from the purchase or transfer price the amount requested by the Finance Director, the purchaser or transferee shall be liable for any taxes, interest or penalty due in excess of any amount withheld, but not exceeding the amount or fair market value of the consideration paid upon such transfer. The purchaser or transferee shall pay over to the Finance Director any amount withheld hereunder upon notification of the refusal of the seller or transferor to pay any taxes, interest or penalty due hereunder and upon notification of the Finance Director's claim against the purchaser or transferee. Nothing in this section shall be construed to relieve the seller or transferor of their liability for taxes, interest and penalty except that any payments received from the purchaser or transferee as provided herein shall reduce such liability payable to the City.

189.12 APPEALS.

Any person dissatisfied with any ruling of the Finance Director which is made under the authority conferred by this chapter or any rules or regulations related thereto, may appeal therefrom to the Board of Review within thirty days of the ruling or decision of the Finance Director, and the Board of Review shall, on hearing, have jurisdiction to annul, affirm, reverse or modify any such ruling or decision, or any part thereof, in accordance with the intent and purpose of this chapter. Notice of appeal, in written form, shall be delivered, or directed by

certified mail, to the Finance Director of the City.

189.13 CONFIDENTIAL INFORMATION.

(a) General Rule. Except as otherwise provided in this section, information provided to the Finance Director by a taxpayer or revealed by such in the course of an investigation or private hearing shall be confidential and no person shall disclose such information except in compliance with a proper judicial order from a court of competent jurisdiction, or in the connection with the performance of that person's official duties or the official business of the City as authorized under the Codified Ordinances.

(b) Disclosure to Other Tax Authorities. The Finance Director may furnish any information obtained under this chapter to the Internal Revenue Service and to the State Tax Commissioner upon request.

(c) Disclosure to Responsible Parties. The Finance Director may disclose any information to any responsible party charged with liability under Section 189.10 for the purpose of monitoring and discharging their obligations there under, including, but not limited to, providing a notice of deficiency issued to a taxpayer.

(d) Disclosure in the Course of Proceeding. The Finance Director may disclose information in the course of any public proceeding or action to collect taxes assessed by the Finance Director.

189.14 EFFECTIVE DATE.

The tax shall be effective as of January 1, 2022.

189.15 SAVING CLAUSE.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

189.99 VIOLATION; PENALTY.

Any person found guilty of violating any of the provisions of this chapter shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense and not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1000.00) for the second and third offense in any one hundred eighty (180) day period. A person who commits offenses in excess of three (3) within any one hundred eighty (180) day period is guilty of a misdemeanor of the first degree. A separate and distinct offense shall be regarded as committed each day on which said person shall commit any such violation or after notification thereof permit any such violation to exist.

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Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. This Ordinance shall be in full force and effect from and after January 1, 2022.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: November 8, 2021 (effective after 30 days)