ORDINANCE NO. 91-17

AN ORDINANCE TO AMEND CHAPTER 886.03 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON PURSUANT TO OHIO REVISED CODE §5739.09(B)(3) TO AUTHORIZE THE CITY TO IMPOSE AN ADDITIONAL THREE PERCENT TAX ON TRANSACTIONS BY WHICH LODGING BY A HOTEL IS OR IS TO BE FURNISHED TO TRANSIENT GUESTS FOR THE PURPOSE OF PROMOTING ECONOMIC DEVELOPMENT AND TOURISM IN THE CITY OF AVON AND DECLARING AN EMERGENCY.

WHEREAS, Ordinance No. 108-99 (Codified as Section 886.03) passed on June 28, 1999 established an excise tax on hotel accommodations (hereinafter referred to as the "lodging tax" or "bed tax") pursuant to Ohio Revised Code Section 5709.02; and

WHEREAS, Council passed Ordinance No. 113-14 on October 14, 2014 seeking to amend Section 886.03 to increase the lodging tax an additional Three (3%) percent to fund, among other things, a newly created Visitors Bureau; and

WHEREAS, the legality of Ordinance No. 113-14 was successfully challenged in Evans v. City of Avon, Case No. 15 CV 185348, Lorain County Court of Common Pleas wherein that Court decided that the Ordinance was illegal and unenforceable; and

WHEREAS, the Mayor then successfully lobbied Statehouse representatives and ultimately obtained a legislative amendment in the form of Ohio Revised Code Section 5739.09(B)(3) which now permits the City to enact local legislation to increase its lodging tax an additional three (3%) percent; and

WHEREAS, ORC §5739.09(B)(3) was passed as part of the State's biennial budget (H.B. 49) and became effective on September 29, 2017; and

WHEREAS, the City now has until December 31, 2017 to amend Section 886.03 to increase the rate of its lodging tax by Three (3%) percent so long as all of the revenue from this 3% increase is used by the municipality for economic development and tourism-related purposes; and

WHEREAS, the City has filed the necessary documents with the Ohio Secretary of State to create the Avon Visitors Bureau, a 501(c)(6) entity and seeks the proceeds of this tax to fund its operations; and

WHEREAS, Council, deeming it to be in the best interests of the health, safety and welfare of the residents and businesses of Avon, desires to enact the additional 3% lodging tax to promote economic development and tourism in this area.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, THAT:

Section 1 - That Chapter 886.03 of the Codified Ordinances of the City of Avon which currently reads as follows:

886.03 IMPOSITION OF TAX.

Commencing June 28, 1999, for the purpose of providing revenue with which to meet the needs of the City for the use of the General Revenue Fund of the City, an excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests. The tax shall be 3% of the amount paid or to be paid by the transient guest for the lodging. Commencing January 5, 2015, for the purpose of providing revenue with which to meet the needs of the City for the use of the City's General Revenue Fund and to fund the City's newly established Visitors Bureau, an additional excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests. This additional tax shall be 3% of the amount paid or to be paid by the transient guest for the lodging, making the total tax due 6%. The additional tax is to be levied in accordance with Ohio R.C. 5739.09(B)(1). The tax applies and is collectible at the time the lodging is furnished, regardless of the time when the amount owed for such lodging is paid. The tax does not apply to lodging furnished to the State or any of its political subdivisions.

For the proper administration of this chapter, and to prevent evasion of the tax, it is presumed that all lodging furnished by hotels, motels and motor inns in the City to transient guests is subject to the tax imposed by this chapter until the contrary is established.
(Ord. 108-99. Passed 6-28-99; Ord. 113-14. Passed 9-22-14.)

Shall be amended to read as follows: (new language in bold print)

886.03 IMPOSITION OF TAX.

Commencing June 28, 1999, for the purpose of providing revenue with which to meet the needs of the City for the use of the General Revenue Fund of the City, an excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests. The tax shall be three percent of the amount paid or to be paid by the transient guest for the lodging.

Commencing ~~January 5, 2015~~ **December 1, 2017,** for the purpose of providing revenue **for the City to promote economic development and tourism related activities,** ~~with which to meet the needs of the City for the use of the City's General Revenue Fund and to fund the City's newly established Visitors Bureau, an additional excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests. This additional tax shall be 3% of the amount paid or to be paid by the transient guest for the lodging, making the total tax due 6%. The additional tax is to be levied in accordance with Ohio R.C. 5739.09(B)(1). The tax applies and is collectible at the time the lodging is furnished, regardless of the time when the amount owed for such lodging is paid. The tax does not apply to lodging furnished to the State or any of its political subdivisions.~~ **an additional Three (3%) Percent excise tax is hereby levied on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to ORC §5739.09(B)(3). This tax shall be in addition to the three percent (3%) tax currently being levied pursuant to ORC §5709.02, resulting in a total aggregate tax due of six percent (6%).** The tax applies and is collectible at the time the lodging is furnished, regardless of the time when the amount owed for such lodging is paid. The tax does not apply to lodging furnished to the State or any of its political subdivisions.

For the proper administration of this chapter, and to prevent evasion of the tax, it is presumed that all lodging furnished by hotels, motels and motor inns in the City to transient guests is subject to the tax imposed by this chapter until the contrary is established. (Ord. 108-99. Passed 6-28-99; Ord. No. 113-14, passed October 15, 2014.)

Section 2 - Council hereby determines that the commencement of the collection of the additional tax additional shall begin effective December 1st, 2017.

Section 3 - Pursuant to and in accordance with the provisions of Ohio Revised Code Section 5739.09(B)(3), the additional tax levied under this section shall be utilized by the Municipality solely to promote economic development and tourism-related activities which shall include, but not be limited to, funding for the City's Visitors Bureau.

Section 4 – All sections of Ordinance No. 113-14 which were not affected by the Court's decision in Evans v. City of Avon, remain in full force and effect unless otherwise amended or deleted pursuant to this legislation.

Section 5 - It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations 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 6 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to levy an additional lodging tax pursuant to §5739.09(B)(3) of the Ohio Revised Code; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: ______________________ DATE SIGNED: ____________________________

By: ____________________________________
Craig Witherspoon, Council President

DATE APPROVED BY THE MAYOR ____________________

____
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

____
John A. Gasior, Law Director

ATTEST:

____
Barbara J. Brooks
Clerk of Council

POSTED:____________________
In Five Places as
Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director