

**CITY OF MANCHESTER
COMMONWEALTH OF KENTUCKY
ORDINANCE NUMBER 2017.009**

**AN ORDINANCE LEVYING A RESTAURANT TAX AND PROVIDING FOR ITS
COLLECTION**

WHEREAS, The Manchester City Council desires to fund the marketing and development of tourism activity within the City of Manchester, and

WHEREAS, The City of Manchester will create by Ordinance a City Tourism Commission for the promotion of these activities within the City of Manchester Known as the Manchester Tourism Commission, which will be established pursuant to all applicable state laws including, but not limited to, KRS 91A.350 to 91A.390 and 91A.400.

PURPOSE

The City Council of the City of Manchester, Kentucky does hereby ordain as follows:

SECTION 1.

- A. Pursuant to KRS 91A.400, there is hereby levied upon the gross retail sales of all food and beverages at restaurants in Manchester, Kentucky, a fee of three percent (3%) of the gross amount of such sales or receipts which shall be passed on to the customer hereof.

SECTION 2.

REPORTS, PAYMENTS, AND PENALTIES

- A. On or before the Twentieth (20th) day of each month following enactment of this Ordinance, each restaurant and Owner/Operator shall tender a written report to the City Clerk/Treasurer and to the Treasurer of the Manchester Tourism Commission on forms provided by the Commission stating the gross sales or receipts of that restaurant from food and beverages for the preceding calendar month. The reporting owner shall calculate the fee due for that period by computing three percent (3%) of the gross sales of the food and beverages. The

operator shall remit with the form the tax due for Manchester Tourism Commission to the City Clerk on the date of the report to the Manchester Tourism Commission by depositing same with the Manchester City Clerk on the date of the report.

- B. For each month, or any part thereof, the report and the fee is past due there shall be added as a penalty two percent (2%) of the fee due. There will be a minimum fee of ten dollars (\$10.00) charged regardless of the amount of fee due, if any, plus one and a half percent (1.5%) per month or for any portion thereof, that the fee and penalty remains overdue. Same shall be compounded daily upon the total unpaid balance of fees, penalties, and interest due thereon until fully paid

SECTION 3.

LIENS

- A. A lien is hereby granted to the city upon all property, real and personal of any restaurant facility to secure the unpaid fees, penalties and interest due from the restaurant facility, which lien shall be perfected by filing a notice of the amount due and statement of lien in the office of the Clay County Court Clerk, Manchester, Kentucky, describing the property on which the lien is asserted, the apparent ownership thereof, the balance due on the filing date and the rate of interest and penalties being added thereto.
- B. Any person who violates this chapter or fails to comply with any of its requirements shall, on being adjudged liable thereof, be fined not less than twenty-five dollars (\$25.00) no more than fifty dollars (\$50.00) for each day the fees, penalties and interest remain unpaid after becoming due. In addition owners shall pay all costs and expenses involved in the collection of the past due amount. Each day a violation continues shall be considered a separate civil offense. Nothing herein contained shall prevent the City of Manchester, Kentucky, from taking any other lawful action as is necessary to prevent or remedy any violation including, but not limited to,

filing civil suits, revoking applicable licenses and permits and other lawful actions.

SECTION 4.

- A. The Manchester Tourism Commission shall only expend the money collected pursuant hereto, within the guidelines of KRS 91A.350 and all other applicable laws, for the purposes of promoting recreational, convention and tourist activity in the City. The Manchester Tourism Commission shall use at least eighty percent (80%) of the funds collected on tourism related and quality of life initiatives within the City of Manchester.
- B. The City of Manchester City Clerk will deposit and account for all fees collected in a special account entitled The Manchester Tourism Commission-Restaurant. The City Clerk along with the Chairman of The Manchester Tourism Commission shall submit quarterly reports to the City Council within thirty days following the close of each quarter of the fiscal year detailing all receipts, expenditures and expense for that quarter. The funds transferred to the Manchester Tourism Commission will be expended only upon the Tourism Commission's true major vote approving the proposed expenditure.
- C. All applicants for the funds from the Manchester Tourism Commission shall file a fully documented proposal budget entailing labor and materials as bid before acceptance and approval of the proposal. Approved contracts must be executed and filed with the City Clerk and will be made available for public inspection as required by law.
- D. The Manchester Tourism Commission must obtain approval from the City Council prior to using any revenues from the restaurant tax for the purposed of capital improvements including the purchase or acquisition of land. In the event that an approved capital project must be debt serviced by bonds or bonded by the city. The Manchester Tourism Commission will pledge amounts agreed upon by the Commission and City Council necessary to satisfy principal and interest payments of the bond issue. The Commission is strongly encouraged to obtain approval from the City Council

for any projects that are estimated at a cost of \$10,000 or more. In obtaining the approval, the Commission must provide the City Council a complete copy of any and all plans, data, research, appraisals, blueprints, etc. regarding the project. The Commission will continue to provide its annual budget to the City Council.

SECTION 5.

DEFINITIONS

- A. A restaurant as used in this ordinance is any fixed or mobile commercial establishment that engages in the preparation and serving of ready to eat foods to the consumer, including, but not limited to, restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grilles, tea rooms, sandwich shops, soda fountains, roadside and festival stands, street vendors, catering kitchens, grocery delicatessen, convenience store delicatessen or similar places in which food is prepared for sale for consumption on the premises or elsewhere. It does not include schools, food vending machines, and establishments serving beverages only in single service or original containers only.
- B. Temporary food stands, booths, street concessions, churches, schools, and similar type operation whether operated by nonprofit organizations or not, when food is prepared and sold for immediate consumption are exempt from this tax.

SECTION 6.

CONFIDENTIALITY

- A. As an express condition of employment, it is agreed that no present or former employee of the Manchester Tourism Commission or any other person shall divulge any information acquired by him of the affairs of any person, or information regarding the fee schedules, return or reports required to be filed with the Tourism Commission, or any information produced by a hearing or investigation, in so far as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecution for making

false reports of any other infraction of this ordinance, nor does it extend to any matter which is in any way made a matter of public record, nor does it preclude furnishing any tax payer or his properly authorized agent with information respecting his own report. Further, this prohibition does not preclude the Tourism Commission or any employee of the Commission from testifying in any court, or forum introducing as evidence returns or reports filed with the Tourism Commission, in any action for violation of state or federal tax laws or of this Ordinance.

SECTION 7.

RECORD KEEPING

- A. Every restaurant facility as defined in this ordinance shall keep such records, receipts, invoices and other pertinent papers in such form as the Tourist Commission may require, for not less than four (4) years from the making of such records. The Tourism Commission or the City Clerk/Treasurer may have access to all of the above records to the extent necessary to determine proper compliance with this chapter.

- B. In the event of any overpayment or an incorrect payment, a request for refund will be considered with proof detailing the overpayment and including an explanation of the claim. The City reserves the right to request further proof of overpayment or incorrect payment. The City may, if deemed appropriate, request that the business making such claim take credit on future returns in Lieu of a reimbursement by check. The period for which the City will consider a request for reimbursement is limited to 2 year to the posted date of request. No claims will be considered unless filed within one year of the date of payment for which the refund is sought.

SECTION 8.

EFFECTIVE DATE

- A. The tax provided for in this ordinance is levied, commencing on the July 1st, 2017. The first report and remittance of tax due from restaurant operators shall be on the July 20, 2017.

SECTION 9.

LICENSING FEE

- A. **ADDITIONAL LICENSING FEES:** The tax imposed by this subchapter, on the trade set forth, shall be in addition to such other license fee or fees levied or imposed generally on all occupations, trades or professions.

SECTION 10.

OPERATOR RESPONSIBILITY

- A. **RESPONSIBILITY OF OPERATOR:** It will be the responsibility of the operator to maintain books, records and papers in support of all amounts reported on the monthly return. The city shall be permitted to examine the books, records and papers of the operator upon notification in writing to the operator.

SECTION 11.

COLLECTION FEES

- A. **COLLECTION FEES:** A collection and administrative fee in the amount of 4.25% of the fees collected shall be retained by the city and deposited into general fund to cover costs of collection and administering this ordinance.

SECTION 12.

SPECIAL ACCOUNT

- A. **SPECIAL ACCOUNT; USE OF FUNDS:** The funds collected from this tax shall be maintained by the City Clerk in a special account and disbursed in accordance with its annual budget. All such money shall be used solely for the purpose of promoting recreational and tourist activity in the city as set out in KRS 91A.390. Same shall not be used to provide a subsidy in any form to any hotel, motel or restaurant. Any money not expended by the Manchester Tourism Commission during any fiscal

year will be used to make up a part of its budget for the next fiscal year.

SECTION 13.

AUTHORITY AND BONDING

- A. ACCOUNTING, CHECK WRITING, AUTHORITY AND BOND REQUIREMENTS:** The mayor shall recommend persons to be vested with check writing authority whom must be submitted for approval or disapproval to the City Council. Only persons approved by the Council may issue or endorse a check on behalf of the Manchester Tourism Commission. There must be two signatures on the Manchester Tourism Commission account, one from the City Administration and one from the Manchester Tourism Commission. No person may execute issue or endorse Manchester Tourism Commission checks or drafts unless BONDED and which bond is approved by the Mayor in writing.

This Ordinance shall be effective upon its adoption and publication as required by law and upon a roll call vote:

Date of First Reading: April 17th, 2017

Date of Second Reading: April 20th, 2017

Date of Publication: April 27th, 2017

X

Jamed Ed Garrison
Mayor

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Mamie Smith
City Clerk