



211 Walnut Street
Neenah, WI 54956

AN ORDINANCE: By the Committee of the Whole
Re: Amending and restating Chapter 15, Article
II of the Code of Ordinances relating to the
imposition of a Room Tax on the Privilege
of Furnishing Rooms at Retail

ORDINANCE NO. 2015-14
Introduced: November 24, 2015
Committee/Commission Action:

RECOMMENED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

WHEREAS, the City of Neenah (“City”) is a duly organized and existing municipality created under the provisions of the laws of the State of Wisconsin; and

WHEREAS, §66.0615 of the Wisconsin Statutes authorizes the governing body of a municipality to adopt an ordinance imposing a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotel keepers, motel operators or other persons furnishing accommodations which are available to the public (“Room Tax”); and

WHEREAS, the geographic area encompassing the CITY OF APPLETON, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Town of Neenah”), the TOWN OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Town of Menasha”), the CITY OF MENASHA, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“City of Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin municipal corporation and political subdivision (“Sherwood”), (collectively, “Municipalities”), is hereby confirmed to be a single destination as perceived by the traveling public, and, therefore, a Tourism Zone, as that term is used in §66.0615 of the Wisconsin Statutes (“Room Tax Act”) (which single destination is referred to as the “Fox Cities Tourism Zone”); and

WHEREAS, the City previously enacted an ordinance imposing a Room Tax, the proceeds of which were directed toward (i) payment of debt service on bonds issued by the Redevelopment Authority of the City of Appleton, Wisconsin, a Wisconsin municipal corporation, to partially fund construction of the Fox Cities Performing Arts Center; (ii) promotion of the Fox Cities Tourism Zone by the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin corporation; and (iii) promotion of the City by the City as a lodging destination; and

WHEREAS, the City now desires to impose an additional Room Tax in the amount of three percent (3%) to be pledged as payment on bonds to be issued as partial funding for the construction of a new Fox Cities Exhibition Center; an additional Room Tax in the amount of one percent (1%) in support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel within the Fox Cities Tourism Zone; and an additional Room Tax in the amount of one percent (1%) to be retained by the City to be used for general purposes, including but not limited to tourism support and development in the Fox Cities Tourism Zone; and

WHEREAS, the City acknowledges that the Room Tax Act imposes certain requirements on the imposition of Room Taxes, including a consideration of the populations of counties in which certain Municipalities are located; and

WHEREAS, the Exhibition Center is intended to be constructed within the City of Appleton; and

WHEREAS, the City acknowledges that Appleton is located within the Counties of Outagamie, Calumet and Winnebago within the State of Wisconsin; and

WHEREAS, the Counties of Outagamie, Calumet and Winnebago, each have a population of less than 380,000; and

WHEREAS, neither Outagamie County, nor Calumet County, nor Winnebago County is located adjacent to a county with a population of at least 380,000; and

WHEREAS, the City acknowledges that the Municipalities are working cooperatively together to construct the Fox Cities Exhibition Center; and

WHEREAS, the City previously entered into a Room Tax Commission and Tourism Zone Agreement with the Municipalities which created the Fox Cities Room Tax Commission for the sole purpose of supporting the promotion and development of the Fox Cities Performing Arts Center; and

WHEREAS, the City now desires to authorize an increased role for the Fox Cities Room Tax Commission for the coordination of tourism promotion and tourism development in the Fox Cities Tourism Zone as more fully set forth herein; and

WHEREAS, by the passage of this Ordinance, the City amends and restates those provisions of all ordinances and/or resolutions imposing and/or amending the imposition of Room Taxes in the City, including but not limited to, Ordinance No. 719 dated July 3, 1985, Resolution No. 6943 dated May 17, 2000, Ordinance No. 1151 dated May 17, 2000 and Ordinance No. 1320 dated March 15, 2006, in order to accomplish uniformity of Room Taxes imposed across the Municipalities located within the Fox Cities Tourism Zone pursuant to the requirements of the Room Tax Act; and

WHEREAS, the City Council finds that the best interests of the City are served by passing this Ordinance.

Section 1. Article II of Chapter 15, Room Tax (§§15-21 through 15-38), of the Code of Ordinances of the City of Neenah is hereby deleted and §15-21 through §15-33 are restated to read as follows:

15-21 Room Tax. There is hereby imposed a Room Tax on the privilege of providing rooms at retail in accordance with the terms of this Article and Wis. Stats. §66.0615 and as detailed in § 15-23 of this Code.

15-22 Definitions. In addition to those terms defined in this Section, the terms used in this Ordinance shall have the definition, if any, ascribed to them in §66.0615 of the Wisconsin Statutes.

“*ARA*” shall mean the Redevelopment Authority of the City of Appleton, Wisconsin, a Wisconsin body politic and corporate.

“*CVB*” shall mean the Fox Cities Convention & Visitors Bureau, Inc., a Wisconsin corporation.

“*Exhibition Center Bonds*” shall mean bonds issued or to be issued by the ARA as partial funding for the construction of a new Fox Cities Exhibition Center, or any refinance thereof, as well as for any other purpose authorized under that Exhibition Center Cooperation Agreement between the Municipalities located within the Fox Cities Tourism Zone, the ARA and the Fox Cities Room Tax Commission, dated as of **[City Clerk Authorized to insert date.]**, 2015.

“*Fox Cities Tourism Zone*” shall mean that geographic area encompassing the City of Appleton, Wisconsin; the City of Kaukauna, Wisconsin; the City of Neenah, Wisconsin; the Village of Kimberly, Wisconsin; the Village of Little Chute, Wisconsin; the Town of Grand Chute, Wisconsin; the Town of Neenah, Wisconsin; the Town of Menasha, Wisconsin; the City of Menasha, Wisconsin and the Village of Sherwood, Wisconsin.

“*Fox Cities Room Tax Commission*” shall mean the Room Tax Commission created by the Municipalities within the Fox Cities Tourism Zone through that Amended and Restated Room Tax Commission Agreement dated **[City Clerk Authorized to insert date.]**, 2015, in order to coordinate tourism promotion and tourism development within the Fox Cities Tourism Zone using the proceeds of Room Taxes imposed under this Ordinance, and having on its Board certain representatives of the Municipalities and certain representatives of the Wisconsin hotel and motel industry.

“*Hotel*” or “*motel*” means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, bed & breakfasts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are

available to the public, except accommodations, including mobile homes as defined in Wis. Stats. § 66.0435(1)(d), rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual.

“*PAC Bonds*” shall mean those bonds issued by the ARA to partially fund construction of the Fox Cities Performing Arts Center.

“*Pledge Agreement*” shall mean that Amended and Restated Pledge and Security Agreement dated May 1, 2012 by and between the City of Appleton, Wisconsin; the City of Kaukauna, Wisconsin; the City of Neenah, Wisconsin; the Village of Kimberly, Wisconsin; the Village of Little Chute, Wisconsin; the Town of Grand Chute, Wisconsin; the Town of Neenah, Wisconsin; the Town of Menasha, Wisconsin; the Fox Cities Area Room Tax Commission and Associated Trust Company.

“*Room Tax*” shall mean a tax on the privilege of furnishing, at retail, rooms or lodging to transients by hotel keepers, motel operators or other persons furnishing accommodations which are available to the public, irrespective of whether membership is required for use of the accommodations, pursuant to the Room Tax Act.

“*Room Tax Act*” shall mean §66.0615 of the Wisconsin Statutes, as amended from time to time.

15-23 Imposition of Room Tax. Pursuant to the Room Tax Act, there is hereby imposed upon the privilege of furnishing, at retail (except sales for resale) rooms or lodging to transients by hotels and motels and other persons furnishing accommodations that are available to the public, including accommodations available or reserved through internet based networks (collectively, “Operators”), irrespective of whether membership is required for use of the accommodations, within the City. Such Room Tax shall be imposed at the total rate of ten percent (10%) on the gross receipts from such retail furnishing of rooms or lodgings within the City. Operators shall remit all collected Room Tax revenues to the Director of Finance in accordance with the requirements of this Ordinance and the Room Tax Act. The proceeds shall then be paid to the Fox Cities Room Tax Commission or its designees or assigns, unless otherwise indicated herein, to be used for purposes of coordinating tourism promotion and tourism development within the Fox Cities Tourism Zone. The Room Tax imposed under this section shall be allocated as follows:

- (a) A Room Tax in the amount of three percent (3%) shall be imposed and allocated toward the support of the CVB, to be used for the promotion of the Fox Cities Tourism Zone as a tourism destination (“CVB Room Tax”), except that:

- (1) The City may retain five percent (5%) of the revenues of this CVB Room Tax for general purposes, including but not limited to tourism support and development in the City in accordance with the requirements of the Room Tax Act.
- (b) A Room Tax in the amount of two percent (2%) shall be imposed and allocated toward payment of debt service on the PAC Bonds in accordance with that Cooperation Agreement dated June 1, 2000 to which the City is a party. The rate imposed as set forth in this subsection (2) shall be known as the "PAC Room Tax". Upon full payment and satisfaction of the PAC Bonds, the PAC Room Tax shall ultimately be reallocated toward the development and support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone as more fully set forth in Section 15-24 of this Ordinance.
- (c) A Room Tax in the amount of three percent (3%) shall be imposed and allocated toward payment of debt service on the Exhibition Center Bonds in accordance with that Exhibition Center Cooperation Agreement dated **[City Clerk Authorized to insert date.]**, 2015 to which the City is a party ("Exhibition Center Room Tax"). The Exhibition Center Room Tax shall sunset and expire upon full payment and satisfaction of the Exhibition Center Bonds at a date to be determined. Upon full satisfaction of the Exhibition Center Bonds, the Room Tax shall be reduced by three percent (3%), with such reduction being deemed to be the share of the Room Tax allocated to the Exhibition Center Room Tax. At the time that the Exhibition Center Bonds are fully satisfied, there may be an excess of Exhibition Center Room Tax proceeds collected above that amount needed to satisfy the Exhibition Center Bonds. In such an event, those excess funds shall be reallocated to the Tourism Development Fund as that term is referenced and defined in the Exhibition Center Cooperation Agreement.
- (d) A Room Tax in the amount of one percent (1%) ("Municipal Room Tax") shall be retained by the City to be used for general purposes, including but not limited to tourism support and development in the Fox Cities Tourism Zone in accordance with the requirements of the Room Tax Act.
- (e) A Room Tax in the amount of one percent (1%) shall be imposed and allocated toward the support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone ("Tourism Facilities Room Tax"). The proceeds of the Tourism Facilities Room Tax shall be remitted to CVB to be held and administered under as part of the

Tourism Development Fund, as that term is referenced and defined in the Exhibition Center Cooperation Agreement.

15-24 Proceeds of PAC Room Tax. Notwithstanding anything in this Ordinance to the contrary, in order to honor existing contractual obligations, the proceeds of the PAC Room Tax shall continue to be directed to the Trustee under the Pledge Agreement until the PAC Bonds have been paid in full. Following full payment and satisfaction of the PAC Bonds, the proceeds generated from the PAC Room Tax for the calendar quarter in which the PAC Bonds were fully paid and satisfied shall be directed toward payment of debt service on the Exhibition Center Bonds, capitalized interest payments on the Exhibition Center Bonds or may be deposited into reserve and stabilization funds associated with the issuance of the Exhibition Center Bonds. Commencing on the first day of the next calendar quarter, all proceeds from the PAC Room Tax shall be directed toward the support of amateur sports facilities within the Fox Cities Tourism Zone and/or other facilities which are reasonably likely to generate paid overnight stays at more than one hotel or motel establishment within the Fox Cities Tourism Zone.

15-25 Priority of Payment. In the event any Operator or Municipality fails to remit the full amounts owed in any quarterly payment (“Deficient Payment”) under this Agreement, the Exhibition Center Cooperation Agreement or the ordinances executed as required thereunder, the parties agree and acknowledge that the Deficient Payment amounts actually received by the Commission shall be applied in the following priority order:

- (a) The Deficient Payment amounts received shall first be applied toward the three percent (3%) Room Tax imposed for the support of the CVB; and
- (b) The Deficient Payment amounts remaining after payment to the CVB as required in subsection (a) above, shall be applied toward the two percent (2%) Room Tax pledged as collateral for payment of the PAC Bonds; and
- (c) The Deficient Payment amounts remaining after payment toward the PAC Bonds as required in subsection (b) above, shall be applied toward the three percent (3%) Room Tax pledged as collateral for payment of the Exhibition Center Bonds; and
- (d) The Deficient Payment amounts remaining after payment toward the Exhibition Center Bonds as required in subsection (c) above, shall be applied toward the one percent (1%) Municipal Room Tax; and
- (e) All remaining Deficient Payment amounts shall be applied toward the one percent (1%) Tourism Facilities Room Tax.

15-26 Tourism Entity. The CVB shall act as the “tourism entity” as that term is defined in the Room Tax Act, for purposes of providing staff, support services and assistance to the Fox Cities Room Tax Commission in developing and implementing programs to promote the Fox Cities Tourism Zone to visitors, as

more fully set forth in an agreement between the Fox Cities Room Tax Commission and the CVB.

- 15-27 Collection and Administration of Room Tax.** This Article shall be administered by the Director of Finance. The tax imposed by this Article shall be payable quarterly and shall be due on the last day of the month next succeeding the calendar quarter in which it was imposed. A return shall be filed with the Director of Finance by all Operators on or before the same date on which such tax is due and payable. Such return shall show the gross room receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period and such other information as the City deems necessary. Every person required to file such quarterly return shall, with his first return, elect to file an annual calendar year or fiscal year return. Such annual return shall be filed within ninety (90) days of the close of each such calendar or fiscal year. The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns, and shall contain certain such additional information as the City requires. Such annual returns shall be signed by the person required to file a return or his duly authorized agent, but need not be verified by oath. The City may, for good cause, extend the time of filing any return, but in no event longer than one (1) month from the filing date.
- 15-28 Permit Required.** Every Operator under this Article shall file with the Director of Finance an application for a permit for each place of business that is required to collect Room Tax hereunder. Every application for a permit shall be made upon a form prescribed by the City and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the City requires. The application shall be signed by the owner if a sole proprietor and, if not a sole proprietor, by the person authorized to act on behalf of such sellers. At the time of making an application, the applicant shall pay the City an initial fee of twenty dollars (\$20.00) for each permit. A permit issued hereunder is non-transferable.
- 15-29 Penalty for Violations.** In addition to the Schedule of Forfeiture set forth in section 15-31 of this Article, any Operator in violation of the terms of this Article by failing to obtain and maintain a permit, when such permit is required, shall be subject to a penalty as set forth in Sec. 1-20 of the Neenah Code of Ordinances for each violation. Each room or unit separately rented or offered for rent, and each day of such rental or offer for rental of such unit shall be a separate violation. In addition, injunctive relief is hereby authorized to discontinue any violation of this Article. Any party deemed to have violated any of the provisions of this Article shall be obligated to pay the costs of prosecution, in addition to actual attorney fees expended in the course of said enforcement. The City may revoke or suspend any permit issued hereunder for failure to comply with the provisions hereof.
- 15-30 Liability for Tax on Sale or Transfer of Business.** If any Operator liable for any amount of tax under this Article sells or transfers all or substantially all of its interest in the hotel, motel or other accommodation, its successors or

assigns shall withhold sufficient amounts from the purchase price to cover the amount of tax liability until the Operator produces a receipt from the Director of Finance that its liability has been paid in full or a certificate stating that no amount is due. If a successor subject to the tax imposed by this Article fails to withhold such amount from the purchase price as required, it shall become personally liable for payment of the amount required to be withheld by it.

15-31 Schedule of Forfeiture. In addition to paying the Room Taxes due hereunder, each Operator shall be required to forfeit an amount equal to twenty-five percent (25%) of the Room Tax due from the Operator to the City for the previous year or Five Thousand Dollars (\$5,000), whichever is less, for a failure to pay the Room Tax due hereunder.

15-32 Confidentiality of Information. To the extent permitted under the law, the information provided to the City under §66.0615(2) of the Wisconsin Statutes shall remain confidential; provided, however, that the City or any employee thereof may use such information in the discharge of duties imposed by law or of the duties of their office or by order of a court. Persons violating the provisions of this section may be required to forfeit not less than \$100 nor more than \$500.

15-33 Enforcement. The City shall enforce this Article in accordance with the Room Tax Act.

Section 2. Expiration of Exhibition Center Room Tax. The Exhibition Center Room Tax imposed at Code §15-23(c) shall expire upon full payment of the Exhibition Center Bonds; provided that Operators may not discontinue collection of the Exhibition Center Room Tax until the City provides notice that the Room Tax allocated to the Exhibition Center has been terminated by operation of this Ordinance and the Exhibition Center Cooperation Agreement.

Section 3. Supersede Conflicting Ordinances; Severability. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed to the extent of such conflict. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, 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 remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 4. Effective Date. This Ordinance shall take effect on January 1, 2016.

PASSED and APPROVED by the Common Council of the City of Neenah, Wisconsin, this _____ day of _____, 2015.

Approved:

Moved by: _____

Dean R. Kaufert, Mayor

Adopted: _____

Attest:

Approved: _____

Published: _____

Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
City Attorney James G. Godlewski
211 Walnut Street
Neenah, WI 54956
State Bar No. 1005210