

97-09

**AN ORDINANCE ESTABLISHING A LODGING TAX
WITHIN THE TOWNSHIP OF BREITUNG**

By the Board of Supervisors of the Township of Breitung

IT IS HEREBY ORDAINED:

Section 1. Definitions. The following words when used in this ordinance shall have the meanings ascribed to them in their section, except where the content clearly indicates or requires a different meaning.

Subdivision 1. "Joint Powers Board" means the Joint Powers Board or the appointed agent of the Board as established under a Joint Powers Agreement among the Township of Breitung and other participating governmental units imposing a local lodging tax, hereinafter referred to as "Board".

Subdivision 2. "Lodging" means the furnishing for consideration of lodging at a hotel, motel, rooming house, tourist court, municipal campground, or resort other than the renting or leasing thereof for a continuous period of 30 days or more.

Subdivision 3. "Operator" means a person who provides lodging to others or any officer, agent or employee of the person.

Subdivision 4. "Rent" means the total consideration valued in money charged for lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging.

Section 2. Imposition of Tax. There is hereby imposed a tax of three percent (3%) of the rent charged by an operator for providing lodging to any person after May 8, 1997, (the effective date of this ordinance). The tax shall be stated, charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the Township and shall be extinguished only by payment to the Township. In no case shall the tax imposed by this Section upon an operator exceed the amount of tax which the operator is required by this Section to collect from a lodger.

Section 3. Administration of Tax.

Subdivision 1. Administration. The Board shall administer and enforce the assessment and collection of the taxes imposed by this Ordinance. The Board shall cause to be prepared blank forms for the returns required by this Ordinance and shall distribute the same throughout the Township of Breitung and furnish them on application, but failure to receive or secure shall not relieve any person from any obligation required of him under this Ordinance. The Board is hereby authorized to adopt rules or regulations for the

administration, collection or enforcement of the tax, from time to time and as they may be amended, which rules or regulations are hereby adopted by reference.

Subdivision 2. Costs of Administration. Not more than five percent (5%) of gross proceeds from the tax by this ordinance may be expended by the Board for the purpose of administration, collection or enforcement.

Section 4. Collections. Each operator shall collect the tax imposed by this ordinance at the time the rent is paid. The tax collected shall be deemed to be held in trust by the operator for the Township of Breitung. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a statement from the operator.

Section 5. Permits.

Subdivision 1. Every operator doing business in the Township of Breitung shall file with the Board an application for a permit and if the operator has more than one place of business where lodging is furnished to others, an application for each place of business must be filed. An application for a permit shall be made upon a form prescribed by the Board and shall set forth the name under which the applicant intends to transact business, the location of its place of business, and other information as the Board may require. The application shall be filed by the owner, if a natural person; by a member or partner, if the owners are an association or partnership; by a person authorized to sign the application if the owners are a corporation; by a natural person acting in any other capacity.

Subdivision 2. The Board shall issue to each applicant a separate permit for each place of business within the Township of Breitung. A permit shall be valid until revoked but shall not be assignable and shall be valid only for the person in whose name it is issued and for business place designated therein. It shall at all times be conspicuously displayed at the place for which it is issued.

Section 6. Revocation of Permit. Whenever any person fails to comply with any provisions of this ordinance, the Board, upon hearing, after giving the person 30 days notice in writing specifying the time and place of hearing and the reason for the proposed revocation and requiring the person to show cause why the permit or permits should not be revoked, may for reasonable cause, revoke or suspend one or more of the permits held by a person. The notice may be served personally or sent by registered mail to the address shown on the person's return. The Board shall not issue a new permit after revocation except upon application accompanied by reasonable evidence of intention of the applicant to comply with the provisions of this ordinance.

Section 7. Rentals without permits. It is unlawful for any person to engage in the

business of renting or lodging to others without the required permit or permits, and it is also unlawful for each officer of a corporation to so engage in such business without the required permit or permits.

Section 8. Payment and returns. The taxes imposed by this ordinance shall be paid by the operator to the Board monthly not later than 25 days after the end of the month in which the tax is collected. At the time of payment, the operator shall submit a return upon such forms and containing such information as the Board may require. The return shall contain the following minimum information:

1. The total amount of rent collected for lodging during the period covered by the return.
2. The amount of tax required to be collected and due for the period.
3. The signature of the person filing the return or that of his agent duly authorized in writing.
4. The period covered by the return.

The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this Section previously paid as a result of any transaction the consideration of which became uncollectible during such reporting period, but only in proportion to the portion of the consideration which became uncollectible.

Section 9. Exceptions and Exemptions.

Subdivision 1. Exceptions. No tax shall be imposed on rent for lodging paid by an officer or employee (while in the performance of his duties) of a foreign government which is exempt by reason of express provisions of Federal law or international treaty.

Subdivision 2. Exemptions. An exemption shall be granted to any person as to whom or whose occupancy is beyond the power of the Township of Breitung to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected, and the claim shall be forwarded to the Board when the returns and collections are submitted as required by this Section.

Section 10. Examination of return, adjustments, notices and demands. The Board shall, as soon as practicable after a return is filed, examine the same and make any investigation or examination of records and accounts of the person making the return as deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the Board within ten (10) days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due,

the excess shall be refunded to the person who paid the tax to the Board.

Section 11. Refunds. Any person may apply to the Board for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year after the tax was paid, or within two years from the filing of the return, whichever period is the longer. The Board shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such person at the address stated upon the return. Any allowance shall include interest on the excess determined at a rate of four (4%) percent per annum from the date such excess was paid or collected until the date it is refunded or credited. If such claim is allowed in whole or in part, the Board shall credit the amount of the allowance against any taxes due under this ordinance from the claimant and the balance of said allowance, if any, shall be paid by the Board to the claimant.

Section 12. Failure to file a return.

Subdivision 1. If any operator required by this ordinance to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, the operator shall, upon written notice and demand, immediately file the return or corrected return, and shall pay any tax due on the basis thereof. If the person shall fail to file the return or corrected return and pay the tax, the Board shall make a return or a corrected return for the person from any knowledge and information as the Board can obtain, and assess a tax on the basis thereof. The tax (less any payments theretofore made on account of the tax for the taxable period covered by the return) shall be immediately paid upon written notice and demand. The operator shall have the burden of establishing the incorrectness or invalidity of any return or assessment made by the Board in any action or proceeding in respect thereto.

Subdivision 2. If any portion of a tax imposed by this ordinance, including penalties thereon, is not paid within 30 days after it is required to be paid, the Board shall direct the institution of such legal action as may be necessary to recover the amount due.

Section 13. Penalties.

Subdivision 1. If any tax imposed by this ordinance is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a specific penalty equal to ten (10%) percent of the amount remaining unpaid.

Subdivision 2. In case of any failure to make and file a return within the time prescribed by this ordinance, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in lieu of the ten (10%) percent

specific penalty provided in subdivision 1 above, ten (10%) percent if the failure is for not more than 30 days with an additional five (5%) percent for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 percent of the aggregate. If the penalty as computed does not exceed \$10.00, a minimum penalty of \$10.00 shall be assessed. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount to be added shall be collected in the same manner as the tax.

Subdivision 3. If any person willfully fails to file any return or make any payment required by this ordinance, or attempts in any manner to evade or defeat any tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50 percent of any tax (less any amounts paid on the basis of the false or fraudulent return) found due for the period to which the return related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties provided by this ordinance.

Subdivision 4. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

Subdivision 5. The amount of tax not timely paid, together with any penalty provided by this section shall bear interest at the rate of eight (8%) percent per annum from the time the tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as part thereof.

Section 14. Examine Records. The Board or employees authorized in writing may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this Ordinance. Every operator is directed and required to give to the Board or its duly authorized agent or employee the means, facilities and opportunity for examinations and investigations as are hereby authorized.

Section 15. Confidential Information. No officer or employee of the Township nor the Board shall divulge or otherwise make known in any manner any particulars disclosed in any return required by this Ordinance, or any information concerning the affairs of the person making the return acquired from the person's records, officers, or employees while performing an examination or audit, except in connection with a proceeding involving taxes due under the Ordinance from the person making a return. Nothing herein contained shall be construed to prohibit the Board from publishing statistics so classified as not to disclose the identity of particular returns and the contents thereof.

Notwithstanding the above provisions of this section, the Board may enter into an

agreement providing for the administration and collection of the tax imposed by this Ordinance by the Minnesota Department of Revenue and its employees while performing an examination or audit, except in connection with a proceeding involving taxes due under this Ordinance from the person making a return. Nothing herein contained shall be construed to prohibit the Board from publishing statistics so classified as not to disclose the identity of particular returns and the contents thereof.

Notwithstanding the above provisions of this section, the Board may enter into an agreement providing for the administration and collection of the tax imposed by this Ordinance by the Minnesota Department of Revenue and its officers and agents.

Section 16. Advertising No Tax. It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or that part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, it or any part thereof will be refunded, except that in computing the tax to be collected, amounts of tax less than one half of one cent may be disregarded and amounts of tax with one half cent or more may be considered an additional cent.

Section 17. Use of Proceeds. All gross proceeds less administrative costs and not less than ninety-five percent (95%) of the gross proceeds obtained from the collection of taxes pursuant to this Ordinance shall be used in accordance with Minnesota Statutes, Section 469.190, as the same may be amended from time to time to fund a Tourism Promotion Bureau for the purpose of marketing and promoting the area as a tourist center.

Section 18. Violations. It is unlawful for any person to refuse to make a return required by this ordinance; or to refuse to pay the tax, or to refuse to remit the taxes collected or any penalty or interest imposed by this ordinance, or to refuse to permit the Board or any duly authorized employee to examine the books, records and papers under the person's control, or to willfully make any incomplete, false or fraudulent return, or to attempt to do anything whatsoever to avoid a full disclosure of the amount of taxes imposed by the ordinance.

Section 19. Appeals.

Subdivision 1. Any operator aggrieved by any notice, order or determination made by the Board under this Ordinance may file a petition for review of the notice, order or determination detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.

Subdivision 2. The petition for review shall be filed with the Board within ten (10) days after the notice, order or determination for which review is sought

has been mailed or served upon the person requesting review.

Subdivision 3. Upon receipt of the petition the Board shall set a date for a hearing and give the petitioner at least five (5) days prior written notice of the date, time and place of the hearing.

Subdivision 4. At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense.

Subdivision 5. The hearing shall be conducted by the Board or its designee provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought.

Subdivision 6. The Board or person conducting the hearing shall make written findings of fact and conclusions based upon the applicable sections of this Ordinance and the evidence presented. The Board or person conducting the hearing may affirm, reverse or modify the initial notice, order or determination.

Subdivision 7. Any decision rendered by the Board pursuant to this Section may be appealed to the Township Board. A petitioner seeking to appeal a decision must file a written notice of appeal with the Clerk of the Township within ten (10) days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the agenda as soon as is practical. The Township shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Township that findings and conclusions were incorrect, the Township may modify, reverse or affirm the decision of the Board upon the same standards as set forth in Subdivision 6.

Section 20. Violation A Misdemeanor. Every person who violates a section, subdivision, paragraph or provision of this ordinance when he performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof. Costs of prosecution shall be assessed upon conviction.

Section 21. Repeal. All inconsistent provisions of prior ordinances are hereby repealed.

Section 22. Effective Date. This Ordinance shall take effect and be in full force on the 8th day of May, 1997 upon its adoption by the Breitung Township Board of Supervisors, and shall be published in the official newspaper(s) of Breitung as provided by Minnesota Statutes.

The adoption of this Ordinance was moved by Supervisor Charles Mattila

and duly seconded by Supervisor Harry Chiabotti

and it was adopted on the following vote:

Yeas: 3

Nays: 0

Absent: 0

Timothy S. Tamsick
Chairman, Breitung Township
Board of Supervisors

Attest:

Margaret Sulya
Township Clerk