

1st Reading, March 25, 2024
2nd Reading, April 8, 2024
3rd Reading, April 22, 2024

Introduced by: Mayor Britton

ORDINANCE NO. 13 - 2024

AN ORDINANCE ENACTING FOR CODIFICATION PURPOSES CHAPTER 183 OF PART ONE, ADMINISTRATIVE CODE, OF THE CODIFIED ORDINANCES OF MADISON VILLAGE, OHIO, LEVYING AN EXCISE TAX OF EIGHT PERCENT ON PARKING OCCUPANCY TRANSACTIONS WITHIN THE VILLAGE OF MADISON.

WHEREAS, a municipal excise tax on parking occupancy transactions is authorized by § 715.09 of the Ohio Revised Code; and

WHEREAS, parking occupancies, as defined by this ordinance, are a transaction which generates increased demand on municipal services such that an excise tax is warranted in the Council's judgment to provide funds for general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements, road, street and highway construction and improvement, improvement of police protection, improvement of fire protection, improvement and construction of storm drainage, the improvement of general municipal functions, and for all lawful municipal purposes; and

WHEREFORE, in furtherance of the foregoing, the Council determines that an excise tax of eight (8%) percent is to be levied at a uniform rate upon the privilege of parking occupancy within the Village; and

WHEREAS, the Council finds that the proposed new Part One, Administrative Code, Chapter 183, Parking Occupancy Tax, is in furtherance of the public health, safety, convenience, comfort, prosperity, general welfare, and further the good and orderly operation of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MADISON, COUNTY OF LAKE, STATE OF OHIO, THAT:

SECTION 1. That the following ordinances of the Village of Madison, Ohio of a general and permanent nature, as codified and arranged into component codes, titles, articles and sections, are and shall hereby be approved, adopted and enacted as Chapter 183 of Part One – Administrative Code of the Codified Ordinances of Madison Village, Ohio:

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|--------|--------------|
| 183.01 | TITLE. |
| 183.02 | DEFINITIONS. |

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|--------|---|
| 183.03 | AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE. |
| 183.04 | APPLICATION OF PAYMENT. |
| 183.05 | TIME ALLOWED FOR RECEIPT. |
| 183.06 | APPLICATION. |
| 183.07 | REMITTANCE OF TAX. |
| 183.08 | BURDEN OF PROOF. |
| 183.09 | NOTICE. |
| 183.10 | MAINTENANCE OF RECORDS. |
| 183.11 | RESPONSIBLE PARTIES. |
| 183.12 | TRANSFER OR TERMINATION. |
| 183.13 | FISCAL OFFICER'S AUTHORITY. |
| 183.14 | ASSESSMENT OF TAX. |
| 183.15 | ENFORCEMENT. |
| 183.16 | REFUND OF TAX. |
| 183.17 | APPEALS. |
| 183.18 | STATUTE OF LIMITATIONS. |
| 183.19 | CONFIDENTIAL INFORMATION. |
| 183.20 | PENALTIES AND INTEREST. |
| 183.21 | TAX TO BE SEPARATELY STATED AND CHARGED. |
| 183.22 | REGISTRATION. |
| 183.99 | VIOLATIONS; PENALTY. |

SECTION 2. That the full, complete and accurate text of Chapter 183 of Part One – Administrative Code of the Codified Ordinances of Madison Village, Ohio is attached hereto as Exhibit “1” and incorporated herein as if fully re-written.

SECTION 3. That publication of these ordinances shall occur in book form containing the certification of the President of Council and Fiscal Officer of their correctness and same shall constitute the Codified Ordinances of Madison Village, Ohio, Part One – Administrative Code, Chapter 183.

SECTION 4. It is 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 any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including § 121.22 of the Ohio Revised Code.

SECTION 5. This Ordinance shall take effect and be in force from and after June 1, 2024.

PASSED:

April 22, 2024



Mark V. Vest
President of Council

Attested:



Kristie M. Crockett
Fiscal Officer / Clerk of Council

Approved:

Date: 4/22/2024



Sam Britton, Jr.
Mayor

CHAPTER 183
Parking Occupancy Tax

- 183.01 TITLE.
- 183.02 DEFINITIONS.
- 183.03 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.
- 183.04 APPLICATION OF PAYMENT.
- 183.05 TIME ALLOWED FOR RECEIPT
- 183.06 APPLICATION.
- 183.07 REMITTANCE OF TAX.
- 183.08 BURDEN OF PROOF.
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- 183.10 MAINTENANCE OF RECORDS.
- 183.11 RESPONSIBLE PARTIES.
- 183.12 TRANSFER OR TERMINATION.
- 183.13 FISCAL OFFICER'S AUTHORITY.
- 183.14 ASSESSMENT OF TAX.
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- 183.17 APPEALS.
- 183.18 STATUTE OF LIMITATIONS.
- 183.19 CONFIDENTIAL INFORMATION.
- 183.20 PENALTIES AND INTEREST.
- 183.21 TAX TO BE SEPARATELY STATED AND CHARGED.
- 183.22 REGISTRATION.
- 183.99 VIOLATIONS; PENALTY.

183.01 TITLE.

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

183.02 DEFINITIONS.

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the state of Ohio and Village of Madison, unless a different meaning is clearly required.

For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

As used in this chapter:

- (A) “Daily interest rate” means the annual interest rate specified in § 183.20(D)(1) divided by three hundred-sixty (360), rounded to the nearest millionth.
- (B) “Day” means a calendar day.
- (C) “Deficiency” means any amount of tax, penalty, or interest due to the Village under this chapter, whether reported or otherwise, that has not been paid within the time allowed for remittance.
- (D) “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.
- (E) “Financial officer” means the person deemed to be the employee or agent of the operator who performs financial management functions in the ordinary course of their employment with the operator, including, but not limited to, the person attesting to any return or other document submitted to the Village pursuant to this chapter.
- (F) “Final assessment” means an assessment issued by the Fiscal Officer that is no longer subject to an appeal by the party assessed.
- (G) “Fiscal Officer” means the Village official holding said office as established by Article VII of the Village Charter.
- (H) “Month” means a calendar month.
- (I) “Motor vehicle” means any vehicle as defined in division (B) of R.C. § 4501.01.
- (J) “Net receipts” means the total amount of all revenue from transactions less (i) refunded transactions and (ii) transactions exempt under § 183.033.
- (K) “Operator” means a person who conducts a parking service, whether in the capacity of owner, principal, agent, lessee, mortgagee in possession, licensee, or any other capacity.
- (L) “Parking facility” means any lot, land, building, garage, structure, enclosure, premises, parcel, yard, indoor or outdoor area, or any portion thereof, except a public way, within the Village offering three (3) or more parking spaces.

- (M) "Parking fee" means the total consideration required to be paid by a patron to a parking service in exchange for parking occupancy. The total consideration shall be valued in money, and shall include the value of all receipts including, but not limited to, cash, credits, property or services of any kind or nature, whether or not such consideration was actually received by the operator of the parking service. A required charge shall not avoid classification as a parking fee by its designation as an ancillary charge for any other purported purpose separate from parking occupancy.
- (N) "Parking occupancy" or "occupancy" means the use, or the right of use, of parking space in or on a parking facility for parking, housing, or storing a motor vehicle or other related act thereof, whether such use is by way of lease, concession, permit, right of access, license to use, or other agreement.
- (O) "Parking service" means the act of offering parking space in or on a parking facility for purposes of occupancy by a patron in exchange for a parking fee. The term includes, but is not limited to, valet services, self-park services, honor lot parking, parking garages, attended parking lots, or any other form of service or facility offering parking space in or on a parking facility for purposes of occupancy by a patron in exchange for a parking fee.
- (P) "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.
- (Q) "Patron" means a person who pays a parking fee to an operator in exchange for parking occupancy by the person or another by way of validation or otherwise.
- (R) "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.
- (S) "Reporting period" or "reporting month" means a single month.
- (T) "Responsible party" means any person who is jointly and severally liable with the taxpayer for the payment of any tax, interest, or penalties, or the performance of any duty imposed by this chapter.
- (U) "Tax" means the parking occupancy tax imposed under § 183.032.
- (V) "Taxpayer" means an operator who has or is responsible for paying any tax, interest, or penalties, or performing any duty imposed by this chapter.
- (W) "Transaction" means the exchange of a parking fee for the privilege of parking occupancy between a patron and operator. No transaction shall be construed to include a parking fee where parking occupancy is not a material part of the transaction or where parking space is provided to the patron as a compliment from a merchant not regularly engaged in the business of conducting a parking service and who receives no consideration from any person in exchange for the occupancy of the parking space provided.

- (X) "Valet" or "valet service" means a parking service requiring the surrender of custody or control of a patron's motor vehicle to the operator for the purpose of parking occupancy at a location different from the place of surrender.
- (Y) "Village" means the Village of Madison, Lake County, Ohio.

183.03 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

183.031 AUTHORITY TO LEVY TAX.

The excise tax on parking occupancy transactions established by this chapter 183 is authorized by § 715.09 of the Ohio Revised Code. This excise tax is in addition to any tax levied pursuant to any other section of the Ohio Revised Code or municipal ordinance to the greatest extent permitted by law.

183.032 PURPOSES OF TAX; IMPOSITION OF TAX; RATE.

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements, road, street and highway construction and improvement, improvement of police protection, improvement of fire protection, improvement and construction of storm drainage, the improvement of general municipal functions, and for all lawful municipal purposes, an excise tax of eight (8%) percent is hereby levied at a uniform rate upon the privilege of parking occupancy within the Village. Such tax is imposed upon the patron for each transaction and shall be in the amount of eight percent (8%) of the parking fee charged for parking occupancy. 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.

This tax constitutes a debt owed by the patron to the Village, which is extinguished only by payment to the operator as trustee for the Village, or to the Village. The patron shall pay the tax to the operator at the time of the transaction. If the transaction payment is paid in installments, a proportionate share of the tax shall be paid with each installment. If for any reason the tax due is not paid to the operator, the Fiscal Officer may require that the tax be paid directly to the Village.

183.033 EXEMPTIONS.

- (A) No tax shall be imposed under this chapter upon transactions with respect to which:
- (1) The operator is the United States government, State of Ohio, or a division, subdivision or department thereof; or
 - (2) The patron is a resident of a single-family home, multiple-family dwelling unit, apartment, boarding house, condominium, or mobile home occupying parking space for the purpose of parking onsite 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; or
 - (3) The patron is a licensed valet, provided that the parking space being occupied is made available pursuant to a written contract with the facility operator and is being

occupied in the ordinary course of providing parking services to a patron of the valet.

(B) No exemption from tax claimed under division (A) hereof shall be granted without a valid exemption certificate completed by the party claiming to be exempt. The exemption certificate shall be prescribed by the Fiscal Officer and include all information deemed necessary for the identification of the parties to the transaction and the authority from which an exemption is claimed. A transaction shall be presumed to be taxable in the absence of a complete exemption certificate executed at the time of the transaction. The operator shall remit the original exemption certificates with the remittance return in which the exempt transaction is reported and retain copies of all exemption certificates on file for a period of time consistent with this chapter.

183.034 ALLOCATION OF FUNDS.

The funds are to be allocated pursuant to municipal need(s) for the purposes stated in § 183.032.

183.035 EFFECTIVE DATE.

This chapter shall be effective as of June 1, 2024.

183.04 APPLICATION OF PAYMENT.

(A) Order of Application. Payments shall be applied first to interest due, then penalties due, and finally taxes due.

(B) Reporting Period. Payments shall be applied to the reporting period specified on the remittance return accompanying payment. If a payment is not accompanied by a remittance return or the payment exceeds the balance due for the relevant reporting period, then payment, or remainder thereof, shall be applied to the earliest reporting period in which a balance is due and outstanding.

183.05 TIME ALLOWED FOR RECEIPT.

(A) Due Date. Any filing required by this chapter must be received by the date specified.

(B) Time of Receipt. The date of receipt shall be the earlier of the date physically received by the Fiscal Officer; or the postmark date on the filing, provided such filing is physically received by the Fiscal Officer by the tenth day following the postmark date on the filing.

(C) Delay. No extension shall be granted for an untimely filing, regardless if such delay was caused by an error of the carrier, misrouted mail, or improperly addressed mail.

(D) Automatic Extension.

(1) Where timely receipt is a condition of compliance with any provision of this chapter and the last day for such receipt falls on a Saturday or Sunday, the last day for compliance shall be extended to the following Monday.

(2) Where timely receipt is a condition of compliance with any provision of this chapter and the last day for such receipt falls on a federal holiday or a day that Village Hall is not open for business, the last day for compliance shall be extended to the following day.

183.06 APPLICATION.

(A) Savings Clause. If any sentence, clause, section or part of this chapter, or any tax imposed against, or exemption granted pursuant to this chapter, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this chapter so found and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the legislative authority of the Village that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this chapter.

(B) Collection of Tax after Termination of Chapter. This chapter shall continue to be effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this chapter is concerned, it shall continue effective until all of the taxes levied in the aforesaid period are fully paid and any and all prosecutions for the collection of taxes or for the punishment of violations of this chapter or collection by suits have been fully terminated, subject to the conditions and limitations contained herein. Returns due for all or any part of the last effective year of this chapter shall be due in accordance with the provisions provided in this chapter, as though the same were continuing.

183.07 REMITTANCE OF TAX.

(A) Return Required. All taxes due shall be remitted to the Fiscal Officer on a monthly basis, by the twentieth day of the month following the reporting period in which the transactions occurred. A remittance return shall accompany the payment of all taxes due. The form of such remittance return shall be prescribed by the Fiscal Officer, and shall at a minimum include:

- (1) The gross receipts that were collected from transactions during the reporting period;
- (2) The total number of vehicles parked during the reporting period;
- (3) The amount of taxes due; and
- (4) Such other pertinent information as the Fiscal Officer deems necessary.

(B) Certification Required. The remittance returns required by this section shall be prepared and filed by the operator's financial officer responsible for compliance with this chapter. Such officer shall sign and attest to the accuracy of the information contained on the remittance return.

(C) Amended Returns. An amended remittance return may be filed to correct any remittance return previously filed with the Fiscal Officer within three (3) years from the date of the original filing. The form of such amended remittance return shall be prescribed by the Fiscal Officer and at a minimum contain all adjusted amounts separately stated, the reason for the adjustment, and the period in which the transactions were or should have been originally reported. Upon examination, the Fiscal Officer shall issue an appropriate assessment of tax, penalties, and interest, if any.

(D) Frivolous Returns. Any return required by this chapter, or the rules and regulations promulgated hereunder, that is determined to be filed in bad faith, substantially incomplete, or providing information without a reasonable basis for such position stated shall be deemed frivolous.

(E) Electronic Filing. The Fiscal Officer is authorized to require electronic filing of all remittance returns and tax payments, and to pass-through to the operator any reasonable processing fee charged by the company processing the payment.

(F) Exemptions. All claims for exemptions from tax filed with the operator during the reporting period shall be filed with the return.

(G) Confidentiality. All returns and payments submitted by each operator shall be treated as confidential by the Fiscal Officer and shall not be released by him or her except upon order of a court of competent jurisdiction or to an officer or agent of the United States, State of Ohio, County of Lake, or Village of Madison, for authorized official use and as authorized by § 183.19.

(H) Cessation of Business. If for any reason an operator shall cease to do business in the Village, all returns and payments are due immediately upon cessation of business.

(I) Taxes Are Village Property. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the Village of Madison until payment thereof is made to the Fiscal Officer. No operator shall use and/or convert these taxes for any other purpose whatsoever.

(J) Fraud.

- (1) No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by this chapter to be filed with the Fiscal Officer, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the Village or the Fiscal Officer.
- (2) No person shall knowingly present to any operator any false information indicating that the parking service as furnished is not subject to the tax.

183.08 BURDEN OF PROOF.

(A) General Rule. Except as otherwise provided in this section, any determination and assessment made by the Fiscal Officer shall be prima facie correct and the operator shall have the burden of proof with respect to any factual issue relevant to ascertaining the liability of the operator imposed by this chapter.

(B) Limitations.

- (1) The Fiscal Officer shall have the burden of proof in any proceeding with respect to any transactions which were reconstructed by the Fiscal Officer solely through the use of statistical information on unrelated operators.
- (2) Division (B)(1) of this section shall apply with respect to an issue only if the operator has maintained all records required under this chapter and has cooperated with all requests by the Fiscal Officer for witnesses, information, documents, meetings, and interviews.

183.08 NOTICE.

(A) Method.

- (1) Unless otherwise provided in this chapter, whenever notice is required, such notice shall be given by United States Certified Mail, addressed to the person concerned at his or her last known address, and proof of such mailing shall be sufficient for the purposes of this chapter.
- (2) If the method of delivery in division (A)(1) of this section is returned or refused, notice shall be given by United States First-Class Mail, addressed to the person concerned at his or her last known address, and proof of such mailing shall be sufficient for the purposes of this chapter.
- (3) Notice served upon a facility owner shall be deemed sufficient where such notice is delivered to the primary owner at the property address designated on the records of the Lake County Auditor pertaining to such parking facility.

(B) Time for Hearing. Notice of any hearing provided for by this chapter shall be given not less than seven (7) days prior to the date fixed for hearing. All hearings provided for in this chapter shall be at a location determined by the Fiscal Officer.

183.10 MAINTENANCE OF RECORDS.

(A) Record Keeping.

- (1) Every operator must keep separately, with respect to each parking service operated by such operator, complete and accurate records which shall include:
 - (a) Primary records including, but not limited to, sales invoices, periodic contracts, tickets or claim checks, exemption certificates, tax payment receipts, and cash register tapes; and
 - (b) Secondary records including, but not limited to, remittance returns, federal and state tax returns, bank deposit receipts, day books, Journals, or any other records in which accumulated data is recorded.
- (2) Any secondary record in which accumulated data is recorded by the operator must be supported by complete primary records from which such data was accumulated.
- (3) The Fiscal Officer is authorized to further regulate the maintenance of records and prescribe rules as to the substance and form of all information required to be maintained by each operator.

(B) Retention of Records. Every person responsible for collecting and remitting the parking occupancy tax imposed under this chapter shall retain all records necessary to compute the tax liability for a period of six (6) years from latter of the date the tax return is filed or the tax is paid; unless the Fiscal Officer consents, in writing, to their destruction within that period or by order requires that they be kept for a longer period.

(C) Failure to Maintain Records. For purposes of determining the amount of tax due where an operator fails to maintain complete primary records which may be utilized in verifying the accuracy of the figures reflected in their secondary records and/or reported on their tax remittance returns, the Fiscal Officer will determine and use the net receipts from a representative period as the basis for application of the tax levied in § 183.032. The determination will be based upon one (1) or more of the following: (1) the operator's income tax records, (2) a sampling of the operator's business activity for a representative period, (3) previous tax remittance returns submitted by the operator,

and/or (4) other information relating to the business activity of such operator. The net receipts for the representative period will be projected for all periods under review.

183.11 RESPONSIBLE PARTIES.

(A) Agency. Where an operator performs his or her 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 his or her principal. Where the managing agent collects parking occupancy tax on behalf of his or her principal, such principal shall be jointly responsible for reporting and remitting the tax to the Village. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.

(B) Exempt Only as to Tax Liability. Any person who qualifies as an operator shall not, by reason of being exempt from the tax liability imposed under this chapter, be exempt from the duties of an operator imposed under this chapter.

(C) 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 financial officer of an operator who willfully fails to collect the tax, file required returns, or make tax payments when due to the Fiscal Officer 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 the financial officer 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.

183.12 TRANSFER OR TERMINATION.

(A) Notice of Transfer Required.

- (1) Any operator who transfers fifty percent (50%) or more ownership of its parking service, or any substantial part of the operations or assets of such parking service, must file a notice of transfer with the Fiscal Officer at least forty-five (45) days prior to the date of such transfer, setting forth the legal name and address of the transferor-operator, legal name and address of the transferee, date of transfer, description of the parking service or assets being transferred, the amount of the transfer price, and any such other information as the Fiscal Officer may require.
- (2) Within thirty (30) days of receipt of the transfer notice required in division (A)(1), the Fiscal Officer will issue a statement of account as provided in division (E) to both the transferor and transferee. The transferee shall withhold the amount due from the transfer price and remit the same to the Fiscal Officer.
 - (a) If the transferee fails to withhold and remit the amount shown on the statement of account, such transferee shall be jointly and severally liable for all amounts indicated on the statement of account up to the fair market value of the consideration transferred, or the transfer price, whichever is greater.

- (b) Any amount due pursuant to division (A)(2)(a) of this section shall constitute a lien on the property being transferred.
 - (c) The transferee shall be relieved of any duty to withhold from the transfer price and shall have no transfer-liability for taxes, interest, or penalties due hereunder from the transferor if the Fiscal Officer fails to issue a statement of account within thirty (30) days of receipt of the notice of transfer.
 - (d) Nothing in this section shall be construed to relieve the transferor of its liability for taxes, interest, and penalties except that any payments received from the transferee as provided herein shall reduce such liability payable to the Fiscal Officer.
- (3) Within twenty (20) days from the transfer date, the transferor shall file a remittance return and pay any tax due in accordance with division (F).

(B) Notice of Termination Required.

- (1) Any operator who intends to cease operating a parking service within the Village or dispose of a majority of the assets of such parking service, must file a notice of such termination with the Fiscal Officer at least forty-five (45) days prior to the date of termination, setting forth the legal name and address of the operator, a description of the operations being terminated, the date of termination, and such other information as the Commissioner may require.
- (2) Within twenty (20) days from the termination date, the operator shall file a remittance return and pay any tax due in accordance with division (F).

(C) Notice of Change of Facility Owner Required.

- (1) Any transferee of property used as a parking facility shall file a notice of change with the Fiscal Officer at least forty-five (45) days prior to the date of such transfer, setting forth the legal name and address of the transferor, legal name and address of the transferee, date of transfer, description of the real property, and any such other information as the Fiscal Officer may require.
- (2) Within thirty (30) days of receipt of the transfer notice required in division (C)(1) of this section, the Fiscal Officer will issue a statement of account as provided in division (E) to both the transferor and transferee. The transferee shall be required to withhold the amount due from the transfer price and remit the same to the Fiscal Officer.
 - (a) If the transferee fails to withhold and remit the amount shown on the statement of account, such transferee shall be jointly and severally liable for all amounts indicated on the statement of account up to the fair market value of the property transferred, or the transfer price, whichever is greater.
 - (b) Any amount due pursuant to division (C)(2)(a) this section shall constitute a lien on the property being transferred.
 - (c) The transferee shall be relieved of any duty to withhold from the transfer price and shall have no transfer-liability for taxes, interest, or penalties due hereunder from the transferor if the Fiscal Officer fails to issue a statement of account within thirty (30) days of receipt of the notice of change.
 - (d) Nothing in this section shall be construed to relieve the transferor of its liability for taxes, interest, and penalties except that any payments received from the transferee as provided herein shall reduce such liability payable to the Fiscal Officer.

(D) Notice of Change of Financial Officer. Any person serving as a financial officer of an operator may, upon termination of its services to such operator, file a notice of change with the Fiscal Officer. Such notice shall serve to limit any personal liability that may be imposed under this chapter for reporting periods beginning after the effective date of the notice.

(E) Statement of Account. When required by this chapter or upon any other proper request, the Fiscal Officer shall issue a statement of account for a requested operator which shall include all taxes, interest, and penalties due as of the close of the previous deadline for remittance as prescribed by division (A) of § 183.14.

(F) Final Reporting Period. A final reporting period shall be any partial reporting period resulting from the transfer or termination of a parking service. Such period shall begin the day following the close of the last reporting period and shall close on the date of transfer or termination, inclusive. The remittance return for a final reporting period shall be due by the twentieth day following the close of such period and be in a form as any other remittance return to be filed, except that it shall indicate "Final Report Period" across the top of the first page.

183.13 FISCAL OFFICER'S AUTHORITY.

(A) Rulemaking. The Fiscal Officer is empowered to adopt, promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of this chapter, including, but not limited to, provisions relating to transactions and record keeping. Rules and regulations shall be effective thirty (30) days after one-time notice publication that they have been adopted in a newspaper of general circulation in Lake County, Ohio.

(B) Rulings. The Fiscal Officer is empowered to hear requests for rulings on the application of the provisions of this chapter and the rules and regulations promulgated hereunder and to render a decision on the same. Such rulings will be at the discretion of the Fiscal Officer and binding only with respect to the party requesting the ruling. Any entity may request a ruling upon application and payment of an administrative fee to be prescribed by the Fiscal Officer.

(C) Investigations. The Fiscal Officer is empowered to conduct investigations relating to any matter pertaining to the administration and enforcement of the provisions of this chapter.

(D) Subpoena Power. The Fiscal Officer is empowered to compel the production of books, papers, records and other information and the attendance of all persons before him or her, whether as parties or witnesses, whenever he or she believes such persons have knowledge pertinent to any inquiry of any tax paid, charged, collected or received or required to have been charged, collected or received. The Fiscal Officer is empowered to examine any person appearing before him or her under oath, concerning any transaction which was or should have been reported for any purpose under this chapter or any activity or occurrence tending to affect the tax levied under this chapter. All costs of production shall be born by the respondent.

(E) Access to Records.

(1) An operator or suspected operator shall provide the Fiscal Officer and/or his or her designated agent access to all records and evidence at all reasonable times and shall provide verification or authentication of the same, as the Fiscal Officer may require.

- (2) An operator or suspected operator is required to provide to the Fiscal Officer and/or his or her designated agent the means, facilities and opportunity to conduct any examination or investigation upon reasonable notice.
- (3) The Fiscal Officer and/or his or her designated agent are authorized to examine the books, bank statements, deposit slips, third-party statements, papers and other 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 compliance with this chapter and any tax due hereunder.

(F) Authority Not Limited. No authority granted to the Fiscal Officer by any other provision of this chapter shall be limited by virtue of not being included in this section.

(G) Abatement of Certain Penalties. Upon good cause, the Fiscal Officer may waive penalties otherwise owing under division (F) of § 183.20 for a taxpayer's failure to pay amounts due.

183.14 ASSESSMENT OF TAX.

(A) Fiscal Officer Shall Make Assessments. The Fiscal Officer shall determine and assess all deficiencies of tax, interest, and penalties due from any taxpayer or responsible party charged with liability for such amounts under this chapter.

(B) Evidence and Use of Estimates. The Fiscal Officer may use all available information in determining an assessment. Information derived from a limited period of time or volume may be used to estimate data for a larger period of time or volume. Such information used in estimations may be derived from sources relating to the operator being assessed or one (1) or more other operators. The lack of admissibility under any applicable rules of evidence shall not bar such use of information in the determination of an assessment.

(C) Notice of Deficiency. The Fiscal Officer shall serve notice on the person being assessed, communicating his or her determination and assessment and shall include a demand for all taxes, interest, and penalties that are due and unpaid. The assessment by the Fiscal Officer shall become final upon the expiration of twenty (20) days from the date notice is provided to the person, unless prior thereto the person files an appeal in accordance with § 183.17.

(D) Multiple Assessments Permitted. The Fiscal Officer may concurrently assess any persons who have, by reason of an act or omission or by operation of law, become liable for the payment of any taxes, interest, or penalties which were not originally incurred by that person. The amount of recovery from such persons shall be limited to the total deficiency due.

(E) Application of Penalties and Interest. Penalties and interest shall accrue from the date the taxes assessed should have been paid in accordance with this chapter. A protest and/or appeal of the Fiscal Officer's assessment shall not toll the application and accrual of penalties and interest.

183.15 ENFORCEMENT.

(A) Suit Authorized. Upon an assessment becoming final and after the expiration of time for all proper appeals, the Director of Law shall, by request of the Fiscal Officer on behalf of the Village, bring or cause to be brought an action to enforce the payment of the assessment in any court of competent jurisdiction against any party liable for payment.

(B) Assessments Collectable as Other Debts. All final assessments no longer subject to appeal shall be collectible as any other debts owed to the Village.

(C) Revocation of License. Upon an assessment becoming final and after the expiration of time for all proper appeals, the Administrator may, at his or her discretion, revoke any license granted under the Codified Ordinances, inclusive of a conditional use permit, to an operator responsible for payment of such assessment upon seven (7) days notice to the license holder.

(D) Termination of Economic Development Assistance. Upon an assessment becoming final and after the expiration of time for all proper appeals, the Administrator may, at his or her discretion, terminate any economic development assistance granted under the Codified Ordinances to an operator responsible for payment of such assessment upon seven (7) days notice to the economic development assistance recipient.

(E) Lien Authorized. A final assessment no longer subject to appeal may be reduced to a lien on all real and/or personal property of the taxpayer or other responsible party.

(F) Offset Authorized. Any credit, refund or other money due to be paid by the Village or any division thereof, to a person who is liable for the payment of a final assessment shall be offset by such liability and paid to the Fiscal Officer in satisfaction of the same.

(G) Enforcement Not Limited.

- (1) No authority granted to the Fiscal Officer or any other officer of the Village by any other provision of the Codified Ordinances shall be limited by virtue of not being included in this section.
- (2) Remedies available to the Fiscal Officer for the enforcement of this chapter shall not be limited by virtue of not being included in this section.
- (3) The exercise of one (1) form of remedy by the Fiscal Officer shall not preclude the concurrent or successive use of another remedy.

183.16 REFUND OF TAX.

(A) Claim Required. A taxpayer or responsible party claiming a refund must file a claim with the Fiscal Officer on forms provided by the Fiscal Officer for that purpose. No refund shall be allowed for any amount paid by any taxpayer or responsible party unless such person bore the burden of such amount and did not shift the burden to another person.

(B) Filing of Claim. A claimant may file a claim for refund for any amount of tax, interest or penalty paid by such claimant in relation to any reporting period ending within the previous three (3) years from the date of filing a claim, provided such amount was 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.

(C) Content of Claim. A claim for refund shall be stated by reporting period and include amended returns for each such period along with an explanation supporting the amended position and amount claimed for refund.

(D) Disposition of Claim. Where a claim for refund is properly filed, the Fiscal Officer shall examine the same and determine the amount of refund due, if any. Before issuing a determination, the Fiscal Officer may request additional information or conduct any investigation necessary in

ascertaining the validity of the claim. After a determination has been made, the Fiscal Officer shall issue a notice of determination, granting a full or partial refund, or denying the claim. The determination by the Fiscal Officer shall become final upon the expiration of twenty (20) days from the date notice is provided to the claimant, unless prior thereto the claimant files an appeal in accordance with § 183.17.

(E) Amount Refunded. Any refund granted under this section shall be without interest and offset by any other indebtedness of the claimant to the Village.

183.17 APPEALS.

Any operator aggrieved by any decision of the Fiscal Officer with respect to the amount of the tax, interest, and penalties, if any, may appeal to the Local Board of Tax Review by filing a notice of appeal with the Board within fifteen (15) days of the serving or mailing of the determination of tax due. The Board shall fix a time and place for hearing the appeal, and shall give notice in writing to such operator at its last known place of business. The findings of the Board shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon service of notice.

Decisions of the Board shall become final after thirty (30) days following the date of notice, unless prior thereto the Fiscal Officer or any proper party, appeal the Board's decision pursuant to R.C. Chapter 2506.

183.18 STATUTE OF LIMITATIONS.

(A) Assessment of Tax.

- (1) Except as otherwise provided in this section, an assessment shall be issued within three (3) years from the date the return was due or the date the return was filed, whichever is later.
- (2) Where an operator underreports more than twenty-five percent (25%) of the total tax due, an assessment shall be issued within six (6) years from the date the return was due or the date the return was filed, whichever is later.
- (3) No limitation in the time for assessment of taxes and associated interest and penalties shall apply in the case of a false or fraudulent return.
- (4) An amended return filed pursuant to § 183.07(C) shall not extend the time provided by any provision of this section.

(B) Offenses.

- (1) Except as so provided in paragraph (2) of this section, prosecutions for an offense made punishable under this chapter shall be commenced within three (3) years after commission of the offense.
- (2) Prosecutions for an offense made punishable under this chapter relating to the willful failure to pay any tax due or file a required return or attempt to evade the application of the tax shall be commenced within six (6) years after the commission of the offense.

(C) Collection. Any action or suit for collection of taxes assessed shall be commenced within ten (10) years from the date of assessment.

(D) Persons Other than the Taxpayer. The time allowed for any action against a person liable for the payment of any tax, interest, or penalty other than the taxpayer shall be the same as in the case such action was being taken against the taxpayer.

183.19 CONFIDENTIAL INFORMATION.

(A) General Rule. Except as otherwise provided in this section, information provided to the Fiscal Officer 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 Village as authorized under the Codified Ordinances.

(B) Disclosure to Other Tax Authorities. The Fiscal Officer 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 Fiscal Officer may disclose any information to any responsible party charged with liability under § 183.11 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) Use in Evidence. This section shall not operate so as to preclude the use of otherwise confidential information when needed for evidentiary purposes in an action brought pursuant to this chapter for a violation of or to enforce any of its provisions, be same civil or criminal.

183.20 PENALTIES AND INTEREST.

(A) Failure to File.

- (1) A penalty of five percent (5%) of the tax collected for the relevant reporting period shall be assessed for each month, or portion thereof, that the return is not filed after becoming due, up to a maximum penalty of twenty-five percent (25%) of the tax collected for that reporting period.
- (2) The tax collected for the relevant reporting period shall be the amount of tax that should have been reported without deduction of any payments for the period that were received in advance of filing.

(B) Failure to Pay. A penalty of one percent (1%) of the amount of tax remaining unpaid after they become due shall be assessed for each month, or portion thereof, that such tax is not paid in full.

(C) Timing of Penalty. Any penalty assessed by this section shall be first applied on the first day the return or tax becomes past due and on every first day on the following months thereafter under the terms of such penalty.

(D) Penalties Not Compounded. Penalty amounts due pursuant to this section shall not be compounded by adding any such penalty to the balance of unpaid tax due.

(E) Penalties Not Applied to Interest. Penalties assessed under this section shall not apply to the portion of the unpaid balance comprised of accumulated interest assessed under this chapter.

- (F) Fraud. If the Fiscal Officer determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty equal to twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties stated in divisions (A) and (B) of this section.
- (G) Interest. In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one (1%) percent per month, or fraction thereof, on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (H) Penalties During Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing or appeal.
- (I) Abatement of Interest and Penalty. In cases where returns were filed in good faith, and an assessment has been paid within the time prescribed by this chapter or where otherwise allowed within the Fiscal Officer's discretion, then the Fiscal Officer may abate any charge of penalty or interest, or both.
- (J) Interest On Unpaid Balance. Any unpaid balance due, including all tax, penalties, and accumulated interest, shall accrue interest on a daily basis until paid in full.
- (1) Rate. The annual rate of interest shall be five percent (5%).
 - (2) Calculating Interest. Interest shall be assessed daily by multiplying the unpaid balance due by the daily interest rate. Interest shall be compounded daily by adding the daily interest calculated to the unpaid balance due as accumulated interest.
 - (3) Interest Additional to Penalties. Interest assessed pursuant to this section is in addition to any other penalty amount imposed under this chapter.

183.21 TAX TO BE SEPARATELY STATED AND CHARGED.

(A) The tax to be collected pursuant to § 183.032 of this chapter shall be stated and charged separately from the parking fee, and shown separately on any record thereof, at the time when occupancy is arranged or contracted and charged for, and upon every evidence of parking occupancy, or any bill or statement or charge made for said parking occupancy issued or delivered by the operator, and the tax shall be paid by the patron to the operator as trustee for and on account of the Village of Madison, and the operator shall be liable for the collection thereof and for the tax as per § 183.11.

(B) No operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the parking fee, or that, if added, any part will be refunded except in the manner hereinafter provided.

183.22 REGISTRATION.

Within thirty (30) days of the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator shall register its parking service with the Fiscal Officer and obtain from him or her a "Parking Service Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the parking facility;
- (3) The date upon which the certificate was issued; and
- (4) "This Parking Service Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Parking Occupancy Tax ordinance of the Village of Madison by registering with the Fiscal Officer for the purpose of collecting from patrons the Parking Occupancy Tax and remitting said tax to the Fiscal Officer. This certificate does not constitute a permit."

The registration requirement of this section is in addition to and in not in lieu of any other required permit approvals. There is no fee for registration pursuant to this section.

183.99 VIOLATIONS; PENALTY.

- (A) Whoever violates divisions (A), (B), (I) or (J) of § 183.07 or violates § 183.22 of this chapter shall be guilty of a misdemeanor of the first degree and shall be subject to the penalties set forth in § 501.99 of the Codified Ordinances of Madison Village for a first degree misdemeanor.
- (B) Whoever knowingly violates any provision of this chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the fourth degree on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the first degree and shall be subject to the penalties set forth in § 501.99 of the Codified Ordinances of Madison Village for such misdemeanors.
- (C) In accordance with § 501.11 of the Codified Ordinances of Madison Village, it is the intent of this ordinance to impose organizational criminal liability.
- (D) The imposition of any other penalties provided herein shall not preclude the Village from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful action, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this chapter or other applicable laws, ordinances, rules, or regulations.