



**RESOLUTION OF THE GOVERNING BODY OF THE  
THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD INDIAN RESERVATION**

**A Resolution entitled, “*Authorizing the Enactment of Hotel Use Tax*”**

**WHEREAS,** The Mandan Hidatsa and Arikara Nation (“MHA Nation”) having accepted the Indian Reorganization Act of June 18, 1934 (“IRA”), and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

**WHEREAS,** The Constitution of the Nation generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article III, Section 1 of the Constitution of the Nation provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** The Tribal Business Council finds that the Nation has a significant interest in protecting the health, safety, and general welfare of its members, the residents within the Nation’s Reservation and those persons and business doing business on and/or visiting the Nation’s Reservation; and

**WHEREAS,** The Tribal Business Council finds that is critically important to raise revenues to fund health, safety, and general welfare programs and services provided to residents of and visitors to land within the Nation’s territorial jurisdiction; and

**WHEREAS,** The Tribal Business Council finds that it is in the public interest to impose, collect, and administer a tax on the rental and occupancy of hotels and other lodging establishments; and

**WHEREAS,** The Tribal Business Council, acting in the best interests of the Tribes, to protect and preserve the political integrity, economic security and health and welfare of the Tribes, now wishes to enact a hotel use tax; and

**WHEREAS,** The Tribal Business Council finds it in the best interest of the Nation to implement the MHA Nation Hotel Use Tax Code in order to raise needed revenue to support government operations and fund governmental services for Reservation residents.

**NOW THEREFORE BE IT RESOLVED,** the Tribal Business Council hereby adopts and enacts the MHA Nation Hotel Use Tax, as a separate Chapter of the Tribal Tax Code.



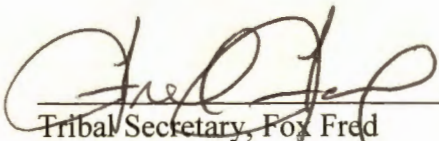
### CERTIFICATION

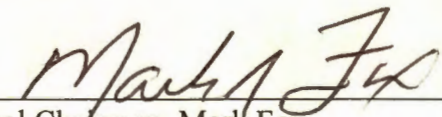
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 14<sup>th</sup> day of December, 2016, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [ X ] Voting. [ ] Not Voting.

Dated this 14<sup>th</sup> day of December, 2016.

ATTEST:

  
\_\_\_\_\_  
Tribal Secretary, Fox Fred  
Tribal Business Council  
Three Affiliated Tribes

  
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Tribal Chairman, Mark Fox  
Tribal Business Council  
Three Affiliated Tribes



**THREE AFFILIATED TRIBES**  
**HOTEL USE TAX**  
**CHAPTER ELEVEN**

**Definitions**

(a) The term "**person**" is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this Act can be applied.

(b) The term "**operator**" is defined to mean any person operating a hotel, including, but not limited to, the owner, proprietor, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.

(c) The term "**occupant**" is defined to mean a person who, for a consideration, uses, possesses or has the right to the use or possession of any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.

(d) The term "**occupancy**" is defined to mean the use or possession, or the right to the use or possession, of any room or rooms in a hotel.

(e) The term "**hotel**" is defined to mean any building or buildings, trailer, or other facility or structure in which a Person may, for consideration, obtain sleeping accommodations in which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. The term shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, campgrounds, dormitory space where bed space is rented to individuals or groups, apartments not occupied by "permanent residents," as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein, "hotel" shall not include hospitals, sanitariums or nursing homes.

(f) The term "**campground**" is defined to mean any property or premise kept, used, maintained, advertised, or held out to be a place where sites are available for the placing of tents, campers, trailers, mobile homes, or other mobile accommodations. As defined herein, "campground" shall not include youth camps.

(g) The term "**room**" is defined to mean any room or rooms of any kind in any part or portion of a hotel which is available for, let for the use of, or possessed for the purpose of lodging or sleeping.

(h) The term "**rent**" is defined to mean the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

(i) The term "**permanent resident**" is defined to mean any occupant who has or shall have the right of occupancy of any room or rooms in the same hotel for at least sixty (60)



consecutive days during the current calendar year or preceding year. When a hotel room has *more than one* occupant that pays or otherwise has the right to occupy the room, the status of the permanent resident is determined individually for each occupant.

(j) The term "**return**" is defined to mean any return filed or required to be filed as herein provided.

#### **1.202. Imposition of Tax; Exemptions**

(a) There is hereby levied an excise tax of six percent (6%) upon the gross proceeds or gross receipts derived from the rent from every occupancy of a room or rooms in a hotel within Three Affiliated Tribes' jurisdiction, including hotels owned by the Three Affiliated Tribes, except that the tax shall not be imposed where the rent is less than Ten Dollars (\$10.00) per day.

(b) No tax shall be imposed hereunder upon a permanent resident.

(c) No tax shall be imposed hereunder upon the United States insofar as it is immune from taxation, nor on any State, County, or municipality.

(d) The tax to be collected shall be stated and charged separately from the rent and shall be shown separately on any record thereof at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill, statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustee for and on account of the Tax Commission and the operator shall be liable for the collection thereof and for the payment of the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this title, and the operator shall have the same right in respect to collecting the tax from the occupant or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the same time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that the Tax Commission may have in the event of nonpayment of rent by the occupant.

(e) Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claim of unsecured creditors and may be collected by suit as any other debt.

(f) Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this chapter, then, in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the Tax Commission and it shall be the duty of the occupant to file a return thereof with the Tax Commission and to pay the tax imposed thereon to the Tax Commission within fifteen (15) days after such tax was due.

(g) The Tax Commission may, whenever it deems it necessary for the proper enforcement of this chapter, provide by regulation that the occupant shall file returns and pay

directly to the Tax Commission the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.

(h) The tax imposed by this section shall be paid upon any occupancy on or after the passage of this Act by the Three Affiliated Tribes Tribal Business Council, except where such occupancy is had pursuant to a contract, lease or other arrangement made prior to such passage. Where rent is paid, charged, billed or falls due on either a weekly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period after passage of this Act, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within such portion to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Tax Commission may, by regulation, provide for credit or refund of the amount of such tax upon application as provided herein.

(i) For the purpose of the proper administration of this chapter, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rentals are subject to the tax until facts to the contrary are established; and the burden of providing that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant.

(j) No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this chapter is not considered as an element in the rent charged to the occupant.

#### **1.203 Records**

Every operator shall maintain for not less than three (3) years complete and adequate records including records of every occupancy and of all rent paid, charged or due thereon and of the tax payable, collected and paid.

#### **1.204 Returns**

(a) Every operator, on or before the last day of each month, shall file with the Tax Commission a return of occupancy and of rents and of the taxes payable thereon for the preceding calendar month. The date of filing shall be the date of delivery to the Tax Commission.

(b) The Tax Commission may permit or require returns to be made by shorter or longer periods and upon such dates as the Tax Commission may specify. The form of return shall be prescribed by the Tax Commission and shall contain such information as it may deem necessary



for the proper administration of this code. The Tax Commission may require amended returns to be filed within twenty (20) days after notice, containing the information specified in the notice.

(c) If a return required by this Chapter is not filed or if a return when filed is incorrect or insufficient on its face, the Tax Commission shall take the necessary steps to enforce the filing of a return or an amended return.

#### **1.205 Payment of Tax**

(a) At the time of filing a return of occupancy and of rents, each operator shall pay to the Tax Commission the taxes imposed upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this chapter.

(b) All taxes for the period for which a return is required shall be due and payable on or before the date fixed for the filing of the return for such period, without regard to whether a return is filed or whether the return correctly filed shows the amount of rents and the taxes due.

(c) If any operator has twice failed to pay taxes on or before the date fixed for payment of such taxes or if any operator refuses to pay the taxes or if the Tax Commission has reasonable grounds for belief that any operator is about to cease business or leave the state or remove or dissipate assets, or if, for any similar reason the Tax Commission deems it necessary to protect revenues due hereunder, the Tax Commission may require an operator to file with the Tax Commission either a performance and payment bond, as detailed herein, or in lieu of this bond, an escrow account or an irrevocable letter of credit as detailed herein. Should the operator not submit either a performance and payment bond, an escrow account or an irrevocable letter of credit within fifteen (15) days of notice to do so, the Tax Commission may conduct a hearing to suspend the license. The performance bond, irrevocable letter of credit or escrow account shall be provided as follows:

- (1) A performance and payment bond in a form acceptable to the Tax Commission naming the operator as obligee thereof, executed by a surety acceptable to the Tax Commission and authorized to do business in the state of North Dakota, in a sum equal to the average daily room rental rate within the Three Affiliated Tribes' jurisdiction, to be ascertained by the Tax Commission, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times six percent (6%); or
- (2) An irrevocable letter of credit in a form acceptable to the Tax Commission, executed by the operator and a federally insured financial institution acceptable to the Tax Commission, providing for a sum equal to the average daily room rental rate within the Three Affiliated Tribes' jurisdiction, to be ascertained by the Tax Commission, times the number of rooms available

for rent within the hotel multiplied by a factor of thirty (30), times six percent (6%); or

- (3) An escrow account held by the Tax Commission in a sum equal to the average daily room rental rate within the Three Affiliated Tribes' jurisdiction, to be ascertained by the Tax Commission, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times six percent (6%).

#### **1.206 Assessment and Determination of Tax**

(a) If a return required by this Chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the Tax Commission from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors.

(b) Written notice of such assessments shall be given to the person liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax, unless the person against whom it is assessed, shall apply in writing to the Tax Commission for a hearing in conformance with Section 1.180 of the Tax Commission Ordinance, or unless the Tax Commission, at its discretion, shall reassess the same.

#### **1.207 Notices**

Notices provided for under this Chapter shall be deemed to have been given when such notices have been delivered personally to the operator or deposited in the United States mail to the last known address of the operator.

#### **1.208 Licenses and Registration**

(a) Every new operator shall file with the Tax Commission, within three (3) days of engaging in the hotel business, an application for license and registration.

(b) The Tax Commission shall, within five (5) days after such registration, issue to each operator a license empowering such operator to collect the tax from the occupant.

(c) The license shall be permanently displayed by the operator in such manner that it may be seen by and may come to the notice of all occupants and persons seeking occupancy.

(d) Such license shall be nonassignable and nontransferable and shall be surrendered immediately to the Tax Commission upon the cessation of business at the hotel named, or upon its sale or transfer.

**1.209 Interest and Penalties**

(a) Every operator who shall fail to collect the taxes imposed by this Chapter shall be liable for the full amount of the tax owed plus interest at the statutory rate until paid.

(b) Willful failure to collect or pay over the taxes imposed by this Chapter shall subject the operator to the provisions of Section 1.150 of the Tax Commission Ordinance.