

BOARD OF COMMISSIONERS
COUNTY OF MERCER
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. 2019-002

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF MERCER, COMMONWEALTH OF PENNSYLVANIA, IMPOSING A COUNTY WIDE HOTEL EXCISE TAX; DEFINING TERMS USED IN THE ORDINANCE; SETTING A RATE OF TAXATION AT 5% OF THE CONSIDERATION PAID FOR LODGING; PROVIDING FOR THE COLLECTION OF THE TAX; REQUIRING MONTHLY REMITTANCE TO THE COUNTY TREASURER; RESTRICTING USE OF FUNDS RECEIVED FROM THE TAX; PROVIDING FOR FEES, PENALTIES AND OTHER ADMINISTRATIVE REQUIREMENTS; MAKING PROVISIONS SEVERABLE; REPEALING INCONSISTENT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Be it ordained and enacted, and it is hereby ordained and enacted by the Board of Mercer County Commissioners by the authority of same as follows:

SECTION 1 SHORT TITLE: This Ordinance shall be known and may be cited as "Mercer County Hotel Excise Tax Ordinance."

SECTION 2 PURPOSE: The purpose of this tax is to raise revenue to directly and indirectly fund county- wide tourist promotion activities.

SECTION 3 DEFINITIONS: The following words and phrases when used in this Ordinance shall have the following meaning as given to them unless the context in which it is used clearly indicates otherwise:

"Consideration." Receipts, fees, charges, rentals, leases, cash, credits, property of any kind or nature, or other payment received by operators in exchange for or in consideration of the use or occupancy by a transient of a room or rooms in a hotel for any temporary period.

"Accommodation fee" The amount by which the rent exceeds the discount room charge, if any.

"Booking agent" A person or entity which facilitates or collects payment for hotel accommodations on behalf of or for an operator. The term "booking agent" shall not include a person who merely publishes advertisements for accommodations.

"County" The County of Mercer, Pennsylvania.

"Discount room charge" The amount charged by an operator to a booking agent in connection with the sale of an accommodation by the booking agent.

"Hotel" A building or buildings in which the public may, for consideration, obtain sleeping accommodations. The term does not include any charitable, educational or religious institution, summer camp for children, hospital or nursing home.

"Occupancy" The use or possession or the right to the use or possession by any person (other than a "permanent resident, ") of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

"Operator" Any person operating a hotel or acting as a booking agent

"Patron" A person who pays the consideration for the occupancy of a room or rooms in a hotel excepting any government employee on official business or any employee or beneficiary of an institution exempt from taxation, in each case the consideration for occupancy being billed to and paid by that government entity or tax exempt institution.

"Permanent resident" Any occupant who has occupied or has the right to occupancy of any room or rooms in a hotel for at least thirty (30) consecutive days.

"Recognized Tourist Promotion Agency" The nonprofit corporation, organization, association or agency which is engaged in planning and promoting programs designed to stimulate and increase the volume of tourist, visitor and vacation business within counties served by the agency as that term is defined in the Act of April 28, 1961 (P.L. 111, No. 50) known as "Tourist Promotion Law."

"Tourism entity" A "tourism promotion agency" as defined in section 2 of the Act of July 4, 2008 (P.L. 621, No. 50) known as the "Tourism Promotion Act," destination marketing organization or regional attractions marketing agency.

"Records" Includes, but is not limited to, the number of daily transactions, the rate of each occupancy, the revenues received for all transactions, cash receipts and sales journals, cash disbursements and purchase journals, and general ledgers.

"Rent" 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] accommodation fees and any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever, including any amount charged by a booking agent. The term "rent" shall not include a gratuity.

"Room" A space in a hotel set aside for use and occupancy by patrons, or otherwise, for consideration, having at least one (1) bed or other sleeping accommodation in a room or group of rooms.

"Tax year" The tax year is the calendar year.

"Temporary" A period of time not exceeding thirty (30) consecutive days.

"Transaction" The activity involving the obtaining by a transient or patron of the use or occupancy of a hotel room from which consideration is payable to the Operator under an express or implied contract.

"Transient" An individual who obtains accommodation in a hotel by means of registering at the facility for the temporary occupancy of a room for the personal use of the individual by paying a fee to the operator.

"Treasurer" The Office of the Treasurer of the County of Mercer.

SECTION 4 IMPOSITION OF HOTEL EXCISE TAX:

- (a) A five (5.0%) percent tax is hereby imposed on the consideration or rent received by each operator of a hotel within the County from each transaction of renting a room or rooms to a patron(s).
- (b) If the County or any duly authorized representative is unable to determine the tax due from operator records, the tax due for each unpaid tax year shall be determined to be the lesser of the following:

- (1) Five (5.0%) percent of the consideration that could have been received by the operator for all hotel rooms during the tax year at occupancy rates in effect at the time of the determination.
 - (2) Five (5.0%) percent of the annualized consideration received during the tax year prior to the determination.
- (c) The County hotel excise tax as amended herein shall take effect on July 1, 2019.

SECTION 5 COLLECTION OF THE HOTEL EXCISE TAX:

- (a) The tax shall be collected by the operator from the patron of the room or rooms.

SECTION 6 PAYMENT OF THE HOTEL EXCISE TAX:

- (a) The operator shall pay the hotel excise tax to the County Treasurer as follows:
- (1) Every operator shall transmit to the Treasurer, on or before the twenty-fifth (25th) day of each calendar month, a return for the calendar month immediately preceding the month in which the return is made, which return all: a) report the amount of Consideration received for the Transactions during the calendar months for which the return is made; and b), the amount of tax due from the Operator for that month; and c) such other information as the Treasurer may reasonably require; and d) the tax due.
 - (2) Every Operator, at the time of filing every required return, shall compute and pay over to the Treasurer the taxes shown as due on the return for the period for which the return is made.
 - (3) If an Operator enters the business of renting of Rooms subsequent to the effective date of this Ordinance, the first return shall be filed on the twenty-fifth (25th) day of the first calendar month subsequent thereto. The first return and tax payment due shall be for all Transactions occurring during the preceding calendar month based upon the actual taxable transactions during the preceding calendar month.

SECTION 7 FILING OF A HOTEL TAX RETURN:

- (a) The Operator shall file a hotel tax return when paying the tax summarizing the consideration received.

SECTION 8 COLLECTION AND DISPOSITION OF REVENUES:

- (a) The County Treasurer shall collect the tax and deposit the revenues received from the tax in a special fund.

- (b) The County shall distribute the revenues from the special fund in the following manner:
 - (1) Deduct from the fund all direct and indirect costs related to the implementation of the tax and all direct and indirect costs related to collection, auditing and distribution of the revenue collected.
 - (2) Distribute to the recognized tourist promotion agency authorized to act within County all remaining revenues not later than sixty (60) days after receipt of the tax revenues.

SECTION 9 USE OF THE REVENUES:

- (a) The recognized tourist promotion agency shall use tax revenues to directly fund county-wide tourist promotion.
- (b) The recognized tourist promotion agency receiving any revenues from the tax authorized by this Ordinance shall annually submit an audited report on the income and expenditures incurred to the County Board of Commissioners no later than September 1.

SECTION 10 RECORD KEEPING REQUIREMENTS:

For each calendar year or part thereof during which a Hotel does any business or receives any consideration, the Operator shall maintain and retain all records for such year until expiration of three (3) years after the hotel excise tax return for such year has been filed.

SECTION 11 ACCESS TO RECORDS:

- (a) The County or any duly authorized representative shall have access to any books, documents, papers and records of the Operator and recognized tourist promotion agency which are directly pertinent to the collection and expenditure of the proceeds of the tax authorized by this Ordinance for the purpose of making audit, examination, excerpts, and transcriptions.

SECTION 12 LATE PAYMENT FEES:

- (a) If for any reason the tax is not paid when due under the provisions of Section 6, a late payment fee at the rate of twelve (12.0%) percent, per year, or one (1.0%) percent, per month (or any portion thereof), on the amount of the tax which remains unpaid shall be added and collected.
- (b) If any operator shall fail to file a timely return as required by Section 6 of this ordinance, same shall be a summary offense and upon conviction before a court of competent jurisdiction punishable by fines of up to \$600.00 per day for each day that the return remains unfiled subsequent to its due date.

SECTION 13 ENFORCEMENT:

- (a) Whenever any operator shall fail to pay the tax as herein provided, upon request of the County Treasurer, the County Solicitor shall bring or cause to be brought a civil action in any Court having jurisdiction to enforce the payment of all taxes and late payment fees due.

SECTION 14 PENALTIES:

- (a) Any person who shall violate any of the provisions of the Ordinance shall, upon conviction thereof, in a summary proceeding before any district magistrate in Mercer County, be sentenced to pay a fine of not more than Seventy-Five Dollars and No Cents (75.00) for the first offense, One Hundred Fifty Dollars and No Cents (150.00) for the second offense, Two Hundred Fifty Dollars and No Cents (250.00) for the third offense and Three Hundred Dollars and No Cents (300.00) for the fourth and each additional offense, and cost of prosecution for each violation thereof, and in default of payment of such fine and costs, to undergo imprisonment for not more than thirty (30) days.
- (b) Each twenty-four (24) hour period during which a violation exists after notice shall have been given in writing by registered mail, return receipt requested, shall constitute a separate violation of this Ordinance.

SECTION 15 ADMINISTRATION:

The County Treasurer shall be responsible for administering the provisions of this Ordinance. The County Treasurer shall promulgate and submit administrative rules and regulations to the Board of Commissioners for their approval within thirty (30) days of the enactment of this Ordinance. Upon passage, the County Chief Clerk shall send a certified copy of this ordinance and any approved regulations to the Mercer County Convention and Visitors Bureau.

SECTION 16 SEVERABILITY OF PROVISIONS:

If any provision, clause, sentence, paragraph, section or part of this Ordinance, or application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporation, public agencies or circumstances, but shall be confined in its operation to the provision,

clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation, public agency, or circumstances involved. It is hereby declared to be the legislative intent of the Board of Commissioners that this Ordinance would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section of part thereof not been included.

SECTION 17 REPEALER All ordinances or parts of ordinances including but not limited to Ordinances 2000-1, 2002-6, and 2016-3 which are inconsistent herewith are hereby repealed.

SECTION 18 EFFECTIVE DATE:

- (a) This ordinance shall take effect on July 1, 2019.
- (b) The proper officers of the County are hereby authorized and directed to take any and all action necessary to implement the County hotel excise tax in accordance with this Ordinance.

DULY ENACTED AND ORDAINED at a public meeting of the Board of County Commissioners of the County of Mercer, Pennsylvania, held on the _____ day of _____ 2019.

COUNTY OF MERCER

Matthew B. McConnell Chairman

Timothy McGonigle, Commissioner

Scott Boyd, Commissioner

Attest:

Ann Morrison, Chief Clerk