

**BOARD OF COMMISSIONERS
COUNTY OF MONROE
COMMONWEALTH OF PENNSYLVANIA**

**ORDINANCE 2017-1
AMENDED 2/6/19 NO. 2019- 1**

**AMENDED AND RESTATED MONROE COUNTY ORDINANCE IMPOSING
AN EXCISE TAX: ON THE CONSIDERATION RECEIVED FOR
TEMPORARY RENTAL OF HOTEL ROOMS; TO FUND MARKETING
OF THE COUNTY FOR TOURISM, TRAVEL, BUSINESS CONVENTION
AND MEETING TRAVEL DEVELOPMENT; ESTABLISHING PROCEDURES
FOR THE COLLECTION OF THE TAX; AND IMPOSING PENALTIES**

WHEREAS, the County of Monroe adopted a Hotel Excise Tax by Ordinance 2004-3, with Amendments (“Prior Ordinance”); and

WHEREAS, the enabling statute for such Hotel Excise Tax (16 P.S. §1770.6), as it applies to the County, has been amended by Act 18 of April 20, 2016 (16 P.S. §1770.10); and

WHEREAS, the County wishes to amend and restate the County’s Hotel excise tax ordinance to conform to the Act of April 20, 2016.

NOW, THEREFORE, with the above matters incorporated by reference herein, it is **HEREBY ORDAINED AND ENACTED**, that the prior Ordinance is hereby amended and restated as follows:

Section 1. Short Title.

This Ordinance may be cited as the “Monroe County Hotel Room Rental Excise Tax Ordinance”.

Section 2. Authority and Purpose.

1. This Ordinance is authorized pursuant to the Act 18 of April 20, 2016, P.L. 134, No. 18, 16 P.S. Section 1770.10 (“Enabling Statute”).

2. As with the prior Ordinance, the purpose of this Ordinance is to continue, to raise revenues to fund the activities of the County’s Recognized Tourist Promotion Agency within the County of Monroe as authorized by the Enabling Statute.

Section 3. Definitions.

The following words and phrases when used in this Ordinance shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bed and breakfast" or "Homestead." A public accommodation consisting of a private residence, which contains ten or fewer bedrooms, used for providing overnight accommodations to the public and in which breakfast is the only meal served and is included in the charge for the Room.

"Board". The Board of County Commissioners of the County of Monroe.

"Booking Agent". A person or entity that facilitates or collects payment for hotel accommodations on behalf of or for an operator.

"Cabin." A permanent structure with beds and running water that is located on a campground on State land or private property and is available to provide overnight lodging for Consideration to persons seeking temporary accommodations. The term does not include a yurt or walled tent.

"Calendar Quarter." The first day of January, April, July and October through the last day respectively of March, June, September and December of each calendar year.

"Conflict of interest." Use by a board member, director, officer, employee or agent of a Recognized Tourist Promotion Agency of the authority of his or her office or employment or any confidential information received through his or her capacity in relation to a Recognized Tourist Promotion Agency for the private pecuniary benefit of himself or herself, a member of his or her Immediate family or a business with which he or she or a member of his or her Immediate family is associated. The term does not include an action having a **de minimis** economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes a board member, director, officer or employee, a member of his or her Immediate family or business with which he or she or a member of his or her Immediate family is associated.

"Consideration." Receipts, fees, charges, rentals, leases, cash, credits, property of any kind or nature or other payment received by Booking Agents and/or Operators in exchange for or in Consideration of the use or Occupancy by a Transient of a Room or Rooms in a Hotel for a Temporary period. Where a Hotel markets American Plan ("AP"), Modified American Plan ("MAP"), or any other form of packages, which include Occupancy, food and beverages, and/or other products or services, the portion of the package Plan Consideration to be allocated to Occupancy for purposes of taxation hereunder shall equal the allocation of American Plan Packages used by the Pennsylvania Department of Revenue with respect to the Pennsylvania State Hotel Occupancy Tax.

"County." The County of Monroe.

"Hotel." A Hotel, motel, inn, guesthouse, Rooming house, Bed and Breakfast, Homestead or other structure which holds itself out by any means, including advertising, license, registration with an innkeepers' group, convention listing association, travel publication or similar association or with a government agency, as being available to provide overnight lodging for Consideration to persons seeking Temporary accommodation; any place which advertises to the public at large or any segment thereof that it will provide beds, sanitary facilities or other space for a Temporary period to members of the public at large; any place recognized as a hostelry or any Cabin. The term does not include any of the following:

(1) A charitable institution which is a "Purely Public Charity". The term "Purely Public Charity" shall be defined in Article VIII, Section 2 of the Pennsylvania Constitution, and the institutions of Purely Public Charity Act, Act 55 of 1997, 10 P.S. Section 371, et. Seq. An employee for a Purely Public Charity must present a tax exemption certificate issued by the Pennsylvania Department of Revenue to support such exemption. The exemption shall not include college, university, education or religious institutions under exemptions (3) and (4) hereafter, other than as stated with respect to the type of facilities included in exemptions (3) and (4).

(2) A portion of a facility that is devoted to persons who have an established permanent residence.

(3) A college or university student residence hall currently occupied by students enrolled in a degree program.

(4) An educational or religious institution camp for children, including a camp registered under the act of November 10, 1959 (P.L. 1400, No.497), entitled "An act providing for the annual registration of organized camps for children, youth and adults; defining the duties of the Department of Health of the Commonwealth of Pennsylvania; and prescribing penalties."

(5) A hospital.

(6) A nursing home.

(7) Part of a campground that is not a Cabin.

"Immediate family." A spouse, parent, brother, sister or child.

"Marketing." An action by a Recognized Tourism Promotion Agency that includes, but is not limited to, promoting and encouraging visitors to visit a specific County, counties or geographic region.

"Occupancy." The use or possession or the right to the use or possession by any person other than a Permanent Resident of any Room in a Hotel for any purpose or the right to the use or possession of the furnishings or to the services accompanying the use and possession of the Room.

"Operator." Any individual, partnership, nonprofit or profit-making association or corporation or other person or group of persons who maintain, operate, manage, own, have custody of or otherwise possess the right to rent or lease overnight accommodations in a building to the public for Consideration.

"Patron." Any person who pays the Consideration for the Occupancy of a Room or Rooms in a Hotel. The term "Patron" shall not include employees of the Commonwealth of Pennsylvania, the federal government, or Purely Public Charities while on business for their respective employer (i.e. Commonwealth of Pennsylvania, Federal Government, or Purely Public Charity).

"Permanent Resident." A person who has occupied or has the right to Occupancy of a Room or Rooms in a Hotel as a Patron or otherwise for a period exceeding thirty (30) consecutive days.

"Programs- Expenditures Program (PEP) Funding." Funding in accordance with Section 8(A)(1) of this Ordinance subject to accountability for such funds by the County Commissioners and for which the County Commissioners have received assurance from the Awardee that it will use such funds for programs and expenditures that expand and improve the county as a destination market while not competing with private sector and tourism efforts.

"Private Sector." A for-profit or non-profit entity. "Private Sector" organizations do not include those owned or operated by the government.

"Recognized Tourist Promotion Agency." The Pocono Mountains Visitors Bureau, Inc. or such other Agency as may hereafter be certified as such pursuant to Section 14 and 16 P.S. §1770.10.

"Room." A space in a building set aside for use and Occupancy by Patrons or otherwise, for Consideration, having at least one bed or other sleeping accommodations provided.

"Temporary." Occupancy of a Room or Rooms in a Hotel for a period of less than thirty-one (31) consecutive days.

"Transaction." The activity involving the obtaining by a Transient or Patron of the Temporary use or Occupancy of a Hotel Room from which Consideration inures to the Booking Agent and/or Operator under an expressed 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 Booking Agent and/or Operator.

"Treasurer." The Treasurer of the County of Monroe.

Section 4. Imposition of Hotel Room Rental Excise Tax.

A. There is hereby imposed an excise tax at a rate of three (3%) percent on the Consideration received by each Booking Agent and/or Operator of a Hotel from each Transaction of renting a Room or Rooms to accommodate Transients.

B. The County Hotel Room Rental Excise Tax under this Amended and Restated Ordinance shall take effect on April 10, 2017 ("Effective Date").

Section 5. Collection of Tax.

The Hotel Room Rental Excise Tax shall be collected by Booking Agents and/or Operators from Patrons.

Section 6. Payment of the Tax.

A. The Booking Agent and/or Operator shall pay the Hotel Room Rental Excise Tax to the County Treasurer as follows:

1. Every Booking Agent and/or Operator shall transmit to the County Treasurer, on or before the 25th day of the first month in each Calendar Quarter, a return for the Calendar Quarter ending during the month immediately preceding the Calendar Month in which the return is made. The return shall report the amount of Consideration received for Transactions during the Calendar Quarter for which the return was made, the amount of the tax due from the Booking Agent and/or Operator for such Calendar Quarter, and such other information as the County Treasurer may reasonably require.

2. Every Booking Agent and/or Operator, at the time of filing such required return, shall compute and pay over to the County Treasurer the Hotel Room Rental Excise Tax shown as due on the return for the period for which the return is made.

3. If a Booking Agent and/or Operator first commences the business of operating a Hotel during a Calendar Quarter, the first return shall be made on the 25th day of the month following completion of such Calendar Quarter, even though the return covers less than the full Calendar Quarter.

Section 7. Collection and Disposition of Revenues.

A. The County Treasurer shall collect the Tax and deposit the revenues received from the tax into a separate segregated fund, entitled the *Hotel Room Rental Excise Tax Fund*.

B. The County Treasurer shall distribute the revenues from the Hotel Room Rental Excise Tax Fund in the following manner:

1. The County Treasurer shall first deduct and pay over to the County General Fund an administrative fee which equals four (4%) percent of all taxes collected under this Ordinance.

2. The County Treasurer shall distribute all remaining revenues in the Hotel Room Excise Tax Fund to the Recognized Tourist Promotion Agency within sixty (60) days after the end of each Calendar Quarter.

C. The Office of the Monroe County Treasurer and Controller may implement Rules and Regulations with respect to the collection of the County Hotel Room Rental Excise Tax from Booking Agents and/or Operators.

Section 8. Use of Revenues.

A. The revenues distributed from the Hotel Room Rental Excise Tax Fund to the Recognized Tourist Promotion Agency pursuant to Section 7(B)(2) hereof shall be used by the Recognized Tourist Promotion Agency as follows:

1. Twenty (20%) percent of the first \$500,000.00 of Hotel Room Taxes collected per calendar year in Monroe County and ten (10%) percent of any Hotel Room Taxes collected in Monroe County above and beyond \$500,000.00 per calendar year, after the deduction for the Administrative Fee, shall be distributed to a separate and dedicated segregated special bank account of the County Commissioners to be utilized only for Program-Expenditure Program (PEP) Funding as hereinafter described. Such funds, net of Administrative Fee, shall be distributed to the County Commissioners, within thirty (30) days after each quarterly receipt thereof by the Recognized Tourist Promotion Agency from the County Treasurer.

(a) The Board of County Commissioners of Monroe County shall act as a PEP Committee to evaluate, monitor and recommend to the Recognized Tourist Promotion Agency PEP Funding awards.

(b) Those programs and expenditures recommended by the PEP Committee for the award of funds will be listed and forwarded to the Recognized Tourist Promotion Agency for its review. These recommended programs and expenditures will be deemed by said Agency to be directly and substantially related to tourism or a business, convention or meeting travel destination within the County and to augment and not compete with private sector tourism or travel efforts and improve or expand the County as a destination market unless said Agency, within thirty (30) calendar days

after written submission of the recommendations, submits a written objection to any program or expenditure and the reason(s) in support thereof.

(c) All PEP funding shall require the Awardee thereof to provide a proposal setting forth the specific use of the requested funds, and reconciling such use(s) with the purposes of expanding and improving the County as a destination market while not competing with private sector tourism and travel efforts. On the completion date for the use of the PEP funding, the Awardee of such funding shall provide within ninety (90) days thereafter, an Affidavit executed under penalty of perjury setting forth the specific use of such funds. In the event that funding to the Awardee is \$250,000 or more in a given calendar year, an audit of the PEP funding usage will be provided by a qualified certified public accountant at Awardee's cost. Such audit shall provide an independent review of Awardee's records, verification of financial record accuracy, and confirmation of compliance with the Funding requirements as well as the uses set forth above.

(d) The County Commissioners as the PEP Committee shall meet at least twice every calendar year to determine their recommended recipients of the CAP Funding and the amount of such funding.

(e) PEP Funding may be awarded to a private for-profit organization, a nonprofit organization, or a governmental agency.

(f) The monies being requested by the organization shall be limited to those purposes set forth in Section 8A.1.(b).

(g) PEP Funding shall not be used by the Awardee to compete with any other private sector tourism or travel efforts in the County.

2. The remainder of the revenues distributed to the Recognized Tourist Promotion Agency shall be used for the following purposes:

(a) Marketing the area served by the agency as a leisure travel destination.

(b) Marketing the area served by the agency as a business, convention or meeting travel destination.

(c) Using all appropriate Marketing tools to accomplish these purposes, including, but not limited to, advertising, publicity, publications, direct Marketing, sales, technology and participation in industry trade shows that attract tourists or travelers to the area served by the agency.

(d) Programs, expenditures or grants that are directly and substantially related to tourism or a business, convention or meeting travel destination within the County, augment and do not compete with private sector tourism or travel efforts and

improve and expand the County as a destination market as deemed necessary by the Recognized Tourist Promotion Agency.

(e) Any other tourism or travel Marketing or promotion program, expenditure or project that does not compete with private sector tourism or travel efforts as deemed necessary by the Recognized Tourist Promotion Agency.

B. Each taxable year for any tax imposed under this section shall run concurrently with the County's financial year.

1. An audited report or financial statement, as determined by the County in consultation with the Recognized Tourist Promotion Agency, on the income and expenditures incurred by a Recognized Tourist Promotion Agency receiving any revenues from the tax authorized under this section shall be submitted annually by the Recognized Tourist Promotion Agency to the County Commissioners and the Secretary of Community and Economic Development.

2. (a) If a Recognized Tourist Promotion Agency fails to submit an annual audit report or financial statement required under Section 8.(C.)(1.) within ninety days of June 30th, the end of the Recognized Tourist Promotion Agency's fiscal year, the County may withhold tax revenues collected and deposited in a Hotel Room Rental Excise Tax Fund under this section until the required annual audit report or financial statement is submitted to the County.

(b) In the event the County does not take action under paragraph (a) within one hundred twenty (120) days of the end of the Recognized Tourist Promotion Agency's fiscal year, the Secretary of Community and Economic Development may require the County to withhold tax revenues collected and deposited in a Hotel Room Rental Excise Tax Fund under this section until the required annual audit report or financial statement is submitted to the County and the Department of Community and Economic Development.

Section 9. Record Keeping Requirements for Booking Agents and/or Operators.

Each Booking Agent and/or Operator shall maintain and retain all records necessary to confirm proper collection and payment of the tax imposed by this Ordinance until the expiration of seven (7) years after the Hotel Room Rental Excise Tax returns have been filed.

Section 10. Access to Records.

The County or its duly-authorized representative shall have access to all books, documents, papers and records of the Booking Agent and/or Operator and the 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 transcripts. Notwithstanding the aforesaid, to the extent allowed by state law, the underlying books, documents, papers, records and tax returns of the Booking Agent and/or Operator shall not be deemed "public records" and the officers, agents and employees of the County shall not divulge or make known whatsoever in any manner or to any person, unless provided by law or for official purposes, the amount or source of income, profits, losses, expenditures, or any particulars thereof as set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof, to be seen or examined by any person except as provided by law or as necessary for official purposes, including enforcement.

Section 11. Late Filing Fee.

A. Any payment of the Hotel Room Rental Excise Tax made after the Due Date shall be subject to late payment interest at the rate of eighteen (18%) percent per annum, or one and one-half (1.5%) percent per month, on the amount of the tax which remains unpaid.

B. Late filing fees shall be added to and paid with the filing of the return.

Section 12. Enforcement.

Whenever a Booking Agent and/or Operator shall fail to pay the taxes herein provided, upon request of the County Treasurer, the County may bring a civil action in any court having jurisdiction to enforce the payment of all taxes, fees and interest due. There shall be added to the claim reasonable attorney fees, in an amount not to exceed ten (10%) percent of the amount due. In addition to other remedies available for collection of debts, the County may file a lien upon the Hotel in the name of the County for use of the County as provided by law.

Section 13. Administration.

A. The County, with the assistance of the County Treasurer and the County Controller, shall be responsible for administering the provisions of this Ordinance and with the assistance of the Treasurer and Controller, if requested, may promulgate and implement administrative rules and regulations relating to the imposition and collection of the Hotel Room Rental Excise Tax.

B. Any board member, director, officer or employee of a Recognized Tourist Promotion Agency shall disclose to the Recognized Tourist Promotion Agency the nature of any Conflict of Interest or financial interest and recuse himself or herself from any action taken on behalf of the Recognized Tourist Promotion Agency which may result in a private pecuniary benefit to the individual, a member of the individual's Immediate family or a business with which the individual or a member of the individual's Immediate family is associated.

C. Nothing in this Ordinance shall be construed to be in conflict with the Law. If any provision of this Ordinance is held to conflict with such Law, the provisions of 16 P.S. §1770.10, as it now exists or is hereafter amended, shall control. Further, if any provision of this Ordinance is held unenforceable for any reason other than a conflict with the law, then such provision shall be modified to be enforceable and reflect the parties' intention. All remaining provisions of this Ordinance shall remain in full force and effect.

Section 14. Certification of Recognized Tourist Promotion Agencies.

Certification and Decertification of a Recognized Tourist Promotion Agency shall be consistent with the process set forth in 16 P.S. §1770.11.

Section 15. Severability.

Each section and subsection of this Ordinance shall be deemed to be severable and not affected by any determination that any other provision of this Ordinance is enforceable.

Section 16. Effective Date.

The terms of this Amended and Restated County Ordinance shall take effect on April 10, 2017.

DULY ENACTED AND ORDAINED at a public meeting of the Board of County Commissioners of Monroe County, Pennsylvania, held on the 10th day of February, 2019.

COUNTY OF MONROE

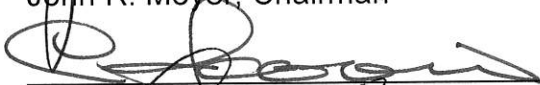
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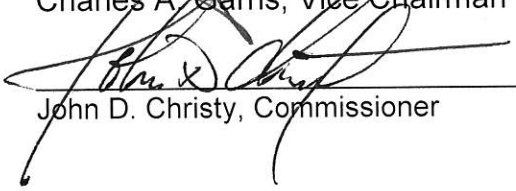
Chief Clerk



John R. Moyer, Chairman



Charles A. Garris, Vice Chairman



John D. Christy, Commissioner