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COUNTY OF WAYNE
ORDINANCE NO. 61405

IMPOSING AN EXCISE TAX ON THE CONSIDERATION RECEIVED FOR RENTING HOTEL ROOMS;
TO FUND TOURISM, CONVENTION PROMOTION AND TOURISM DEVELOPMENT; ESTABLISHING
PROCEDURES FOR THE COLLECTION OF THE TAX; AND IMPOSING PENALTIES

The Board of Commissioners of the County of Wayne ordains as follows:

Section 1. Short title

This Ordinance may be cited as the *Wayne County Hotel Room Rental Excise Tax Ordinance*.

Section 2. Authority and Purpose

1. This Ordinance is authorized pursuant to the Act of December 22, 2000, P.L. 1019, No. 142, Section 4, 16 P.S. Section 1770.6.
2. The purpose of this Ordinance is to raise revenues to fund Tourism Convention Promotion and Tourism Development within the County of Wayne.

Section 3. Definitions

The following words and phrases, when used in this Ordinance, shall have the meaning 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 Wayne.

Calendar Quarter – January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

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. 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 follow the allocation set forth in 61 Pa. Code §38.1(c)(1) as amended. Further, the Hotel may also deduct from the Occupancy portion actual expenditures for activities that are included in the plan.

County - The County of Wayne.

Hotel – A hotel, Motel, Bed and Breakfast, Homestead, Inn, Guest House 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; or any place recognized as a hostelry. The term does not include: any portion of a facility that is devoted exclusively to persons who have an established permanent residence; a college or university student residence hall; any private campground; or any cabins, public campgrounds or other facilities located on State land. The term specifically does not include the initial sale, resale or licensing of timeshare units or residences, whether the transaction conveys a timeshare unit or personal residence in fee simple, or leases or licenses same. Notwithstanding the aforesaid, the term does include single-family residences, multi-family residences, and timeshare units which are marketed as stated hereinbefore in the definition of “Hotel” by the owner and/or his/her agent, or by Hotel Operators in the same manner as they market their Hotel Rooms, for occupancy for less than thirty-one (31) consecutive calendar days, unless occupied by the owner thereof; and (b) the rental for Occupancy by private campgrounds of rooms, cabins, guesthouses, or any other structure to provide temporary overnight Occupancy of a Room, for persons, other than the owner or members thereof (in the case of a private membership campground), seeking temporary accommodation, but not including the renting of lots or tracts without structures thereon.

Occupancy – The use or possession or the right to the use or possession of a Hotel Room for Transient, overnight Occupancy 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 a Room. Occupancy generally shall not include the use or possession of a common area, banquet or meeting room for purposes other than Transient, overnight Occupancy.

Operator – An 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 Hotel to the public for Consideration, including the agents of such individuals.

Patron – A 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). The term “Purely Public charity” shall be as 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 Department of Revenue to support such exemption.

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.

Recognized Tourist Promotion Agency – The Pocono Mountain Vacation Bureau, Inc.

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 – A calendar year beginning January 1 and ending December 31 of the same calendar year.

Transaction – The activity involving the obtaining by a Transient or Patron of the use or Occupancy of a Hotel Room for which Consideration is payable to the Operator under an express or an 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 Treasurer of the County of Wayne.

Section 4. Imposition of Hotel Room Rental Excise Tax

- A. There is hereby imposed an excise tax at a rate of three percent (3%) on the Consideration received by each Operator of a Hotel from each Transaction of renting a Room or Rooms to accommodate Transients.
- B. The County Hotel Room Rental Excise Tax shall take effect on August 1, 2005. (“Effective Date”). Any written agreements in existence prior to August 1, 2005 (“Adoption Date”), between the Operator of a Hotel and a Patron for the renting of a Room or Rooms to accommodate Transients after the Effective Date, shall not be subject to the County Hotel Room Rental Excise Tax, provided the actual occupancy takes place within one year of the “Adoption Date.”

Section 5. Collection of Tax

The Hotel Room Rental Excise Tax shall be collected by Operators from Patrons.

Section 6. Payment of the Tax

- A. The Operator shall pay the Hotel Room Rental Excise Tax to the County Treasurer as follows:
 - 1. Every Operator shall transmit to the County Treasurer, on or before the 25th day of the month (July, October, January and April) following each calendar quarter, a return for the calendar quarter ending during the month immediately preceding the 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 Operator for such calendar quarter, and such other information as the County Treasurer may reasonably require.
 - 2. Every 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 an 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 segregated fund, entitled the *Hotel Room Rental Excise Tax Fund*.
- B. The County Treasurer shall distribute the revenues from the Hotel 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 shall not exceed in any Tax Year the lesser of:
 - a. Two percent (2%) of all taxes collected under this Ordinance; or
 - b. Forty Thousand Dollars (\$40,000.00), which amount shall be adjusted by-annually, beginning two (2) years after the date of enactment, by the percentage growth in the Consumer Price Index for All Urban Consumers as determined by the U.S. Department of Labor.
 - 2. The County Treasurer shall distribute all remaining revenues in the Hotel Excise Tax Fund to the Recognized Tourist Promotion Agency within sixty (60) days after the end of each calendar quarter.

Section 8. Use of Revenues

- A. The Recognized Tourist Promotion Agency shall use the funds distributed to it under this Ordinance for the purposes of Tourism, Convention Promotion and Tourism Development.
- B. The Recognized Tourist Promotion Agency shall annually submit to the Board a report of the income generated by the Hotel Room Rental Excise Tax and the expenditures of same by the Recognized Tourist Promotion Agency.

Section 9. Record Keeping Requirements for Operators

Each 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 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 Operator shall not be deemed "public records" and the officers, agents and employees of the County shall not divulge or make know 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 and Interest

- A. Any return filed after the due date shall be subject to a late filing fee of \$50.
- B. 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 nine percent (9%) per annum, or three-fourths (3/4) of one percent (1%) per month, on the amount of the tax which remains unpaid.
- C. Late filing fees and late payment interest shall be added to and paid with the filing of the return.

Section 12. Enforcement

Whenever any 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 percent (10%) of the claim, and costs of suit. The County, in addition to the deduction of Section 7B(1), shall deduct from any monies paid to Recognized Tourist Promotion Agency pursuant to Section 7B and as set forth in the Memorandum of Understanding, the charge for each enforcement action undertaken and/or completed during the applicable calendar quarter.

Section 13. Administration

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

Section 14. 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 15. Effective Date

This Ordinance shall take effect on August 1, 2005 and may be terminated at any time by the Board of Commissioners.

DULY ENACTED AND ORDAINED at a public meeting of the Board of County Commissioners of Wayne, Pennsylvania, held on the 14th day of June, 2005

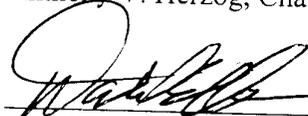
Attest:


Chief Clerk

WAYNE COUNTY COMMISSIONERS



Anthony V. Herzog, Chairman



Donald E. Olsommer, Vice-Chairman



Robert V. Carmody., Commissioner