

COUNTY OF WAYNE
ORDINANCE NO. 12-29-2016

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 April 20, 2016, P.L. 134, No. 18, Section 3, 16 P.S. Section 1770.10.
2. The purpose of this Ordinance is to raise revenues to fund tourism and conventions within the County as set forth herein and as set forth in a Memorandum of Understanding between the County and the Pocono Mountain Visitors Bureau, Inc., incorporated herein by reference.

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.

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.

Conflict of Interest – Use by a board member, director, officer or employee 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 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.

County – Any county of the third through eighth class that was authorized to levy a hotel occupancy or room rental tax under the former section 1770.2 or 170.6.

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 hostel; or any cabin. 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 does not include any of the following:

A charitable institution.

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

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

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 "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."

A hospital.

A nursing home.

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 – 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 – Any person who pays the consideration for the occupancy of a room or rooms in a hotel.

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 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 a county and certified by the county as of the effective date of this subsection or under section 1770.11.

Room – A space in a building set aside for use and occupancy by patrons or otherwise, for consideration, having at least one (1) bed or other sleeping accommodations provided.

Room Tax Advisory Committee – The Room Tax Advisory Committee shall consist of five (5) residents of Pike County selected by the Pike County Commissioners. The Room Tax Advisory Committee shall be a sub-committee of Recognized Tourism Promotion Agency.

Transaction – The activity involving the obtaining by a transient or patron of the use or occupancy of a hotel room from which consideration emanates to the 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 Operator.

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 took effect on August 1, 2005 (“Effective Date”), and shall continue in effect after the amendments to the Ordinance are approved.

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 (April, July, October and January) 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 is 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 be Four (4%) percent.
 - 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 any and all of the following purposes:
 - 1. Marketing the area served by the agency as a leisure travel destination.
 - 2. Marketing the area served by the agency as a business, convention or meeting travel destination.
 - 3. 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.
 - 4. 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. The following shall apply to grants awarded under this paragraph:
 - (i) Grants require a cash or in-kind local match of at least 25%.
 - (ii) Grants may not be used for signage that promotes a specific entity on the situs of that entity, except where the signage also carries the local of a Recognized Tourist Promotion Agency.
 - 5. 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.
 - 6. The recognized tourism promotion agency shall place 20% of the first \$ 500,000 and 10% of any additional net lodging tax revenue in a special fund dedicated to programs promoting tourism and marketing in the County of Wayne.
 - 7. The Wayne County Commissioners shall appoint a Room Tax Advisory Committee consisting of five (5) individuals to provide advice and direction for expenditures from

the special fund for specific programs that promote tourism and marketing in Pike County. The recognized tourism promotion agency shall meet with the said Room Tax Advisory Committee on a quarterly basis to discuss the spending of the monies in the restricted fund. The recognized tourism promotion agency shall use its best efforts to follow the direction, as provided by the Members of the Room Tax Advisory Committee.

- B. An audited report or financial statement as determined by the County in consultation with the recognized tourism promotion agency on the income and expenditures incurred by recognized tourism promotion agency receiving any revenues from the tax authorized under this section shall be submitted annually by Recognized Tourist Promotion Agency to the County Commissioners. If the Recognized Tourism Promotion Agency fails to submit an annual report or financial statement required under subsection (f) within ninety (90) days of the end of the Recognized Tourist Promotion Agency's fiscal year, the county may withhold tax revenues collected and deposited in a special fund under this section until the required annual audit report or financial statement is submitted to the county.

In the event the county does not take action under paragraph 8(B) within one hundred twenty 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 special 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.

- C. Any board member, director, officer or employee of a Recognized Tourist Promotion Agency and the Room Tax Advisory Committee 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.

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.

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 the _____ day of _____, 2016.

DULY ENACTED AND ORDAINED at a public meeting of the Board of County Commissioners of Wayne, Pennsylvania, held on the _____ day of _____, 2016.

WAYNE COUNTY COMMISSIONERS

Attest:

Vicky J Botjer, Chief Clerk

Brian W. Smith, Chairman

Jonathan A. Fritz, Vice-Chairman

Wendell R. Kay, Commissioner