

ORDINANCE 2019-5

AN ORDINANCE REAFFIRMING AND IMPOSING THE HOTEL ROOM RENTAL TAX TO FUND TOURIST PROMOTION IN CUMBERLAND COUNTY, IMPOSING A RATE OF TAX, PROVIDING FOR THE COLLECTION, DEPOSIT AND DISTRIBUTION OF TAX REVENUES, AUTHORIZING EXPENDITURES OF THE TAX AND REPEALING IN PART ORDINANCES 2001-3 AND 2014-2 AS SUBSEQUENTLY AMENDED.

WHEREAS, the Commissioners of the County of Cumberland by Ordinance 2001-3 established a hotel room rental tax for purposes of funding tourist promotion in Cumberland County; and

WHEREAS, Ordinance 2001-3 was subsequently amended by Ordinances 2007-6, 2009-6 and 2014-2; and

WHEREAS, the Commissioners of the County of Cumberland by this Ordinance desire to reaffirm and impose the hotel room rental tax.

NOW THEREOFRE, the Board of Commissioners of the County of Cumberland hereby enacts and ordains the following:

I. 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:

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

“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.

“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.

"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 minimus 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 any temporary period.

"County". The County of Cumberland, 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 hotel, motel, inn, guesthouse, rooming house, 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 or any cabin. The term does not include any of the following:

- (1) A charitable institution.
- (2) A portion of a facility that is devoted to persons who have an established permanent resident.
- (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 or rooms.

“Occupant”. A person (other than a permanent resident) who, for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license or agreement.

“Operator”. An individual, partnership, limited liability company, 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”. A 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 consecutive days.

“Recognized Tourist Promotion Agency”. A nonprofit corporation, organization, association or agency designated by the Board of Commissioners of the County of Cumberland as the County’s Tourist Promotion Agency which is engaged in planning and promoting programs designed to stimulate and increase the volume of tourist, visitor and vacation business within the County. The Tourist Promotion Agency must be duly established, designated and recognized as such in accordance with and pursuant to the Act of April 28, 1961 (P.L. 111, No. 50), known as the “Tourist Promotion Law”.

“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, 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 building set aside for use and occupancy by patrons, or otherwise, for consideration, having at least one bed or other sleeping accommodation provided.

"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 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 elected treasurer of the County of Cumberland.

II. IMPOSITION OF HOTEL ROOM RENTAL TAX (TAX).

1. A three (3%) percent tax is hereby imposed on the consideration received by each operator of a hotel within the County from each transaction of renting a room or rooms to transients. A three (3%) percent tax is hereby imposed on the accommodation fee received by each booking agent.

2. If the County or any duly authorized representative is unable to determine the tax due from operator or booking agent records, the tax due for each unpaid tax year shall be determined to be the lesser of the following:

A. Three (3%) percent of the consideration that could have been received by the operator and, in the case of the tax due on the accommodation fee, three (3%) percent of the accommodation fee received by the booking agent for all hotel rooms during the tax year at occupancy rates in effect at the time of the determination.

B. Three (3%) percent of the annualized consideration and, in the case of the tax due on the accommodation fee, three (3%) percent of the annualized accommodation fee, received during the tax year prior to the determination.

III. COLLECTION OF THE TAX.

The tax shall be collected by the operator or booking agent from the patron of the room or rooms and paid over to the County Treasurer. Nothing herein shall be construed to relieve the operator or booking agent from liability for failure to collect the tax from a patron.

IV. BOOKING AGENT OBLIGATIONS

A booking agent shall provide the County Treasurer with a comprehensive listing of each operator with whom the booking agent contracts and which operator is located within the County. The listing shall provide the property owner's or owners' name(s) and the property address(es). The listing shall include the name of the operator, if the

operator is different than the property owner. A booking agent shall update the listing on a quarterly basis and provide the updated listing to the County Treasurer.

V. EXEMPTIONS.

1. A permanent resident, as that term is defined in this Ordinance, is excluded from the tax upon the occupancy of any room or rooms during which, or at the expiration of which, he is or becomes a permanent resident.

2. The only other exceptions from the tax shall be as set forth in Title 61 Pa. Code 38.2 which is incorporated herein by reference. These exemptions shall include:

- A. Ambassadors, ministers and consular officers of foreign governments;
 - B. Occupancy of hotel rooms by United States Government;
 - C. Occupancy of hotel rooms by other exempt entities.
3. No person or entity other than those referred to by the preceding paragraphs of this section shall be exempt from the tax.

VI. PAYMENT OF THE TAX.

- 1. The operator shall pay the tax to the County Treasurer monthly.
- 2. The payment shall be postmarked no later than the 20th day of the following month.

VII. FILING OF A TAX RETURN.

The operator shall file a tax return on forms prepared by the County when paying the tax summarizing the consideration received and providing documentation as deemed necessary by the County.

VIII. COLLECTION AND DISPOSITION OF REVENUES.

- 1. The County Treasurer shall collect the tax and deposit the revenues received from the tax in a special fund established for the purpose.
- 2. The County Treasurer shall distribute the revenue from the special fund in the following manner:
 - A. Deduct and retain from the fund an administrative fee from the taxes collected, such administrative fee shall be established by the County, but shall not exceed four percent of the taxes collected in any taxable year.

B. Distribute all remaining revenues to the County's Tourist Promotion Agency no later than sixty (60) days after receipt of the tax revenues. The revenues from the special fund shall be used by the Tourist Promotion Agency for the following purposes:

1. Convention promotion.
2. Marketing the area served by the County's Tourist Promotion Agency as a leisure travel destination.
3. Marketing the area served by the County's Tourist Promotion Agency as a business travel destination.
4. Using all appropriate marketing tools to accomplish these purposes, including, but not limited to, advertising, publicity, publications, direct marketing, direct sales and participation in industry trade shows.
5. Projects or programs that are directly and substantially related to tourism within the County, augment and do not unduly complete with private sector tourism efforts and improve and expand the County as a destination market.
6. Any other tourism marketing or promotion program deemed necessary by the County's Tourist Promotion Agency.

IX. AUDIT.

1. The Tourist Promotion Agency shall use tax revenues as provided herein.
2. The Tourist Promotion Agency receiving any revenues from the tax authorized by this Ordinance shall submit prior to March 31st of the following year an audited report of the income and expenditures of the revenues distributed by the County Treasurer.

X. RECORDKEEPING REQUIREMENTS.

Operators shall retain records for three (3) years after a return is filed.

XI. ACCESS TO RECORDS.

The County or any duly authorized representative shall have access to any books, documents, papers and records of the operator and the 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.

XII. LATE PAYMENT PENALTY FEE.

If for any reason the tax is not paid when due under the provisions of Section IV, a penalty of one and one-half (1.5%) percent per month shall be imposed upon the operator of a hotel for failure to timely collect and remit the tax. .

XIII. ENFORCEMENT.

Whenever any operator shall fail to pay the tax as herein provided, the County may file a lien upon the hotel in the name of the County and for the use of the County as provided by law. In addition, the County may bring or cause to be brought a civil action in any Court having jurisdiction to enforce payment of all taxes, late payment fees, interest and costs of suit.

XIV. PENALTIES.

Any person who shall violate any of the provisions of this Ordinance shall, upon conviction thereof in a summary proceeding before any magisterial district judge in Cumberland County, be sentenced to pay a fine of not more than One Thousand dollars (\$1,000.00), or to undergo imprisonment for not more than ten (10) days, or both.

XV. 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 consistent with this Ordinance.

XVI. 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, corporations, 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 or part thereof not been included.

XVII. REPEAL OF ORDINANCE 2001-3, AS AMENDED.

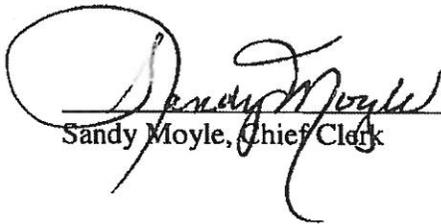
Ordinance 2001-3, as amended by Ordinances 2007-6 and 2009-6, is hereby repealed. The repeal of Ordinance 2001-3 as amended notwithstanding, nothing herein shall interfere with or affect the collection of any delinquent hotel room rental tax and any costs, interest, fines, penalties, late payment fees or any enforcement action initiated or that could have been initiated under Ordinance 2001-3, as amended, prior to the effective date of this Ordinance.

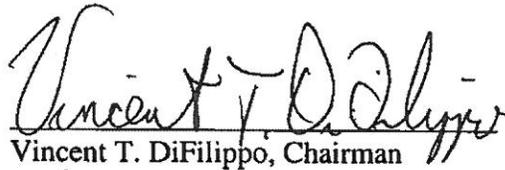
XVIII. EFFECTIVE DATE.

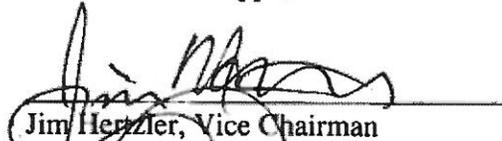
1. This Ordinance shall become effective upon enactment.
2. The proper officers of the County are hereby authorized and directed to take any and all action necessary to implement the County Hotel Room Rental tax in accordance with this Ordinance.

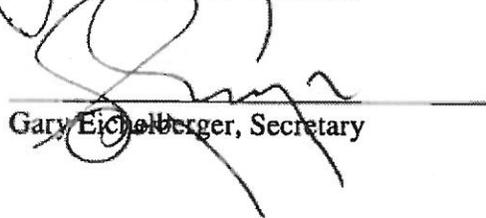
ENACTED AND ORDAINED this 21 day of October, 2019.

BOARD OF COMMISSIONERS


Sandy Moyle, Chief Clerk


Vincent T. DiFilippo, Chairman


Jim Hertzler, Vice Chairman


Gary Eichberger, Secretary