

COUNTY OF SOMERSET

ORDINANCE NO. 2018-01

AN ORDINANCE AMENDING AND RESTATING THE HOTEL TAX ORDINANCE OF SOMERSET COUNTY, PENNSYLVANIA, ORDINANCE NO. 3 OF 2002, ADOPTED AUGUST 27, 2002, BY INCREASING THE RATE OF TAX FROM 3% TO 5% AND INCREASING THE ADMINISTRATIVE FEE TO 4% OF ALL TAXES COLLECTED UNDER THE ORDINANCE, CHANGING AND CLARIFYING DEFINITIONS, OTHERWISE CONFORMING THE PRIOR ORDINANCE TO AMENDATORY LEGISLATION ENACTED BY THE PENNSYLVANIA GENERAL ASSEMBLY IN ACCORDANCE WITH ACT 18 OF 2016, AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES, RESOLUTIONS, OR OFFICIAL ACTIONS INsofar AS THE SAME SHALL BE INCONSISTENT HEREWITH.

WHEREAS, on August 27, 2002, the Somerset County Board of Commissioners adopted Ordinance No. 3 of 2002 known as the Hotel Tax Ordinance of Somerset County, Pennsylvania, imposing an excise tax on the consideration received by each operator of a hotel, as defined by the Ordinance, from each transaction of renting a room or rooms to accommodate transients, as defined by the Ordinance, and for providing for the collection, payment and reports of said tax, and penalties for violation of any provisions of the Ordinance;

WHEREAS, *inter alia* and more particularly, said Ordinance No. 3 of 2002 established a tax rate of three (3%) percent and an administrative fee to be retained by the County not to exceed in any tax year the lesser of two (2%) percent of all taxes collected under the Ordinance or Forty Thousand (\$40,000.00) Dollars, with said amount being adjusted biannually under terms and conditions more particularly set forth in the Ordinance;

WHEREAS, by the Act of April 20, 2016, P.L. 134, No. 18, Session of 2016, No. 2016-18, (hereinafter "Act 18 of 2016"), the Pennsylvania General Assembly amended the County Code, to, *inter alia*, authorize counties of the third through eighth classes to increase the collectible hotel room rental tax to a rate not to exceed five (5%) percent, to increase the administrative fee to an amount not to exceed four (4%) of all taxes collected in any taxable year, and change and clarify definitions; *see* 16 P.S. § 1770.10;

WHEREAS, the County of Somerset, Commonwealth of Pennsylvania, is a county of the sixth class; and

WHEREAS, the Somerset County Board of Commissioners desires to hereby amend Ordinance No. 3 of 2002 to conform with Act 18 of 2016 and repeal all prior ordinances, parts of ordinances, resolutions, or other official actions insofar as the same are inconsistent herewith.

NOW, THEREFORE, BE IT ORDAINED.

Section 1. **Title.** This Ordinance shall be known and cited as the Amended Hotel Tax Ordinance of Somerset County, Pennsylvania.

Section 2. **Definitions.** The following words when used in this Section shall have the meanings ascribed to them in this Section:

(1) “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.

(2) “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.

(3) “Conflict of interest.” Use by a board member, director, officer or employe 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 employe, 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.

(4) “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.

(5) “County.” The County of Somerset, Commonwealth of Pennsylvania.

(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 hostelry or any cabin. The term does not include any of the following:

- (a) A charitable institution.
 - (b) A portion of a facility that is devoted to persons who have an established permanent residence.
 - (c) A college or university student residence hall currently occupied by students enrolled in a degree program.
 - (d) An educational or religious institution camp for children, including a camp registered under the act of November 10, 1959 (P.L. 1400, No. 497), 35 P.S. §§ 3001 *et seq.*, 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.”
 - (e) A hospital.
 - (f) A nursing home.
 - (g) Part of a campground that is not a cabin.
- (7) “Immediate family.” A spouse, parent, brother, sister or child.
- (8) “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.
- (9) “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.
- (10) “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.
- (11) “Patron.” Any person who pays the consideration for the occupancy of a room or rooms in a hotel.
- (12) “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.

(13) “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 Section 1770.10 of the County Code, 16 P.S. § 1770.10, or under Section 1770.11, 16 P.S. § 1770.11.

(14) “Records.” Includes, but tis not limited to, the number of daily transactions, the rate of reach occupancy, the revenues received from all transactions, cash receipts and sales journals, cash disbursements, and purchase journals, and general ledgers.

(15) “Report.” The reporting of the consideration received by each operator of a hotel, within the County, from each transaction of renting a room or rooms to accommodate transients, on a form furnished by the County.

(16) “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.

(17) “Tax.” The tax imposed upon the consideration received by each operator of a hotel, within the County, from each transaction of renting a room or rooms to accommodate transients as established hereunder.

(18) “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.

(19) “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.

(20) “Treasurer.” The elected Treasurer of the County of Somerset.

Section 3. **Imposition, Rate and Purpose of Tax.**

(1) There is hereby imposed a five (5%) percent excise tax on the consideration received by each operator of a hotel, as defined by this Ordinance, within the County, from each transaction of renting a room or rooms to accommodate transients.

(2) If the County or any duly authorized representative thereof is unable to determine the tax due from operator records, the tax due for each unpaid tax year shall be determined as follows: Five (5%) percent of the consideration that could have been received by the operator for all rooms that could be rented during the tax year to accommodate transients at occupancy rates in effect at the time of the determination.

Section 4. **Collection, Payment, and Reports.**

(1) The operator shall collect the tax imposed by this Ordinance from the patron of the room and paid over to the County.

(2) The County Treasurer is hereby directed to collect the tax and deposit the revenues received from the tax in a special fund established for that purpose. Subsequent to the deduction for administrative costs as hereinafter provided, the County shall distribute to the recognized tourist promotion agency all revenues received from the tax not later than sixty (60) days after the receipt of the tax revenues. The revenues from the special fund shall be used by the recognized tourist promotion agency for the purpose of tourism, convention promotion and tourism development.

(3) Each tax year for all taxes imposed hereunder shall run concurrently with the County's fiscal year.

(4) For the purpose of defraying the costs associated with the collection of the tax imposed hereunder and otherwise performing its obligation under this Section, the County is hereby authorized to retain an administrative fee amount not to exceed four (4%) of all taxes collected in any taxable year from the taxes collected hereunder.

(5) The County Commissioners are hereby authorized to establish rules and regulations concerning the collection of the tax.

(6) Every operator report shall be made upon a form furnished by the County.

(7) Every operator shall transmit to the County Treasurer, the reports as follows:

(a) lodging facilities with one hundred (100) rooms or more on or before the 20th day of each month, a report which shall contain the previous month's information for which the report is made;

(b) lodging facilities with less than one hundred (100) rooms on or before the 20th day of the month following each calendar quarter.

The report shall include the amount of consideration received for the transactions during the month or quarter for which the return is made; the amount of tax collected by the operator during the period, number of rooms available, and such other information and records as the County Treasurer may require.

(8) Every operator, at the time of filing every report required by this Section, shall compute and pay to the County Treasurer the taxes collected by operator and due to the County during the period from which the report is made.

(9) Upon request, the hotel operator shall permit inspection and make available to the County's authorized representatives all books and records which such operator is otherwise required to maintain pursuant to federal and state law and regulations. These records shall be maintained for a period of three (3) years from the date of filing of the applicable room tax reports.

(10) The County shall promulgate appropriate rules and regulations to implement the provisions of this Ordinance.

Section 5. **Penalties and Other Remedies.**

(1) The Treasurer is hereby authorized to impose and collect all penalties incurred by operators who fail to file a report and pay all tax due, within the time frames set forth in Section 4 above, at a rate of one and one-half (1 ½ %) percent per month penalty for late payment of tax.

(2) Any person violating any of the provisions of this Ordinance shall be subject to criminal prosecution and, upon conviction thereof in a summary proceeding, may be sentenced to pay a fine not in excess of One Thousand (\$1,000.00) Dollars to be paid to the use of the County with costs of prosecution. Each violation of this Ordinance shall constitute a separate offense, subject to the penalties set forth herein.

(3) 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.

(4) The penalties and remedies set forth hereunder shall be cumulative in nature and shall be in addition to any other penalties or remedies available to the County under applicable law.

Section 6. **Repeal.** All prior ordinances, parts of ordinances, resolutions, or other official actions in conflict with the provisions of this Ordinance are hereby repealed.

Section 7. **Severability.** If any section, clause, phrase, portion or provision of this Ordinance is for any reason determined by a court of competent jurisdiction to be invalid, such holding shall not affect the validity of the remaining portions of the Ordinance.

Section 8. **Effective Date.** This Ordinance shall be effective the 1st day of April, 2018, shall apply to all hotel rooms occupied in the County by transients after said date, and shall continue until amended or repealed by the Board of Somerset County Commissioners.

ENACTED AND ORDAINED this 6th day of March, 2018.

SOMERSET COUNTY
BOARD OF COMMISSIONERS

Gerald Walker, Chairman

James T. Yoder Vice-Chairman

John P. Vatauk Secretary

Attest:

Sonya Augustine, Chief Clerk

DRAFT