



Office of the Adams County Commissioners

117 Baltimore St., Room 201, Gettysburg, PA 17325-2391

PHONE (717) 337-9820 · FAX (717) 334-2091

Commissioners: Randy L. Phiel, James E. Martin, Marty Karsteter Qually

County Manager: Albert M. Penksa, Jr. CGFM Chief Clerk: Paula V. Neiman

Solicitor: John M. Hartzell

ORDINANCE NO. 2 OF 2018

AN ORDINANCE OF THE COUNTY OF ADAMS, COMMONWEALTH OF PENNSYLVANIA, ENACTING, ESTABLISHING, LEVYING AND SETTING A HOTEL ROOM RENTAL TAX REQUIRED FOR THE SPECIFIC PURPOSES OF THE COUNTY GOVERNMENT, HEREINAFTER SET FORTH

RECITALS

WHEREAS, the Pennsylvania legislature enacted Act 142 of 2000, codified in part at 16 P.S. § 1770.7, providing the opportunity for a hotel tax to be imposed upon operators of hotels within the geographic boundary of the County of Adams, which Act 142 of 2000 was relied upon by the Adams County Board of Commissioners (“Commissioners”) for the imposition of a Hotel Room Rental Tax by enactment of Ordinance 3 of 2001, dated October 24, 2001; and

WHEREAS, the Pennsylvania legislature, by Act 142 of 2012, amended 16 P.S. § 1770.7 to allow for a different hotel tax rate, among other changes made to the enabling legislation for such a Hotel Room Rental Tax, which Act 142 of 2012 was relied upon by the Commissioners for the imposition of a modified Hotel Room Rental Tax through enactment of Ordinance 3 of 2012, dated September 5, 2012; and

WHEREAS, the Gettysburg Travel Council, Inc., trading and doing business as Destination Gettysburg, is recognized as the official Tourist Promotion Agency (“TPA”) for the County of Adams, and has certain duties and responsibilities related to the administration of the Hotel Room Rental, pursuant to this Ordinance and the enabling legislation; and

WHEREAS, after use of the Hotel Room Rental Tax program established through the enactment of Ordinance 3 of 2012, for a period of over five (5) years, and evaluation of the management and enforcement of the Hotel Room Rental Tax program, the Commissioners desire to modify the Hotel Room Rental Tax program to provide increased hotel accountability, improved reporting accuracy, and greater enforcement options.

NOW THEREFORE, be it **ENACTED AND ORDAINED** by the Commissioners of the County of Adams, Pennsylvania, and it is hereby **ENACTED AND ORDAINED** by the authority of the same, as follows:

SECTION 1 - TITLE

This Ordinance shall be known and be cited as the Hotel Room Rental Tax Ordinance of Adams County and is enacted in accordance with such enabling legislation know as Act 142 of 2000, as amended by Act 142 of 2012, codified at 16 P.S. § 1770.7.

SECTION II - INCORPORATION

The caption and recitals of this Ordinance and any rules adopted pursuant to the Ordinance set forth above are incorporated herein by reference and made an essential part hereof.

SECTION III - DEFINITIONS

The following words when used in this Ordinance shall have the meanings ascribed to them in this section:

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.

Controller. The Office of the Controller of the County of Adams.

County. The County of Adams (“County”), in the Commonwealth of Pennsylvania.

Exemption. The determination that a Transient who proffers evidence of an acceptable form, based on the laws, regulations and policies of the Commonwealth of Pennsylvania, Department of Revenue, is allowed to avoid the paying of the Hotel Room Rental Tax imposed by this Ordinance.

Hotel. A hotel, motel, inn, guest house, room, or other structure located within the geographic limits of Adams County, which holds itself out by any means including advertising, online service or solicitation, license, registration with an innkeeper’s group, convention listing association, travel publication, or similar association, or with a government agency, as being available to provide overnight lodging or use of facility space for consideration to persons seeking temporary accommodation; and 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 portions of a facility that is devoted to persons who have an established permanent residence, or a college or university residence hall.

Occupancy. The use or possession or the right to use or possession by any person other than a permanent resident of any room in a hotel for any purpose or the right to use or possession of the furnishings or to the services accompanying the use and possession of the room.

Operator. An individual, partnership, non-profit or profit-making association or corporation, or other person or group of persons who maintain, operate, manage, own, or has custody of, or otherwise possess the right to rent or lease overnights accommodations in a hotel 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 in a hotel as a patron or otherwise for a period exceeding thirty consecutive days.

Records. Includes, but is not limited to, the number of daily transactions, the rate of each occupancy, the revenues received for all lodging, cash receipts and sales journals, cash disbursements and purchase journals, general ledgers, copies of forms used to file monthly and other periodic tax returns with the County to comply with the Hotel Room Rental Tax Ordinance, copies of tax exemption certificates, and all records relied upon in completing monthly and periodic Hotel Room Rental Tax returns, as well as related correspondence.

Return. A completed remittance form, on which the Operator makes a monthly statement of Transactions concerning the Occupancy of Rooms for the subject Hotel, noting Consideration, Exemptions, and other required information, and used by the County to assess Tax liability under the Hotel Room Rental Tax.

Room. A space in a Hotel set aside for use and occupancy by patrons, or otherwise, for consideration, having at least one bed or other sleeping accommodation in a room or group of rooms.

Tax. The Hotel Room Rental Tax, as authorized by this Ordinance and Act 142 of 2000, as amended by Act 142 of 2012, and codified at 16 P.S. § 1770.7.

Tax Year. The tax year for the Hotel Room Rental Tax shall be the same as the calendar year.

Temporary. A period of time not exceeding thirty (30) consecutive days.

Transaction. The activity involving the obtaining by a transient or patron of the use or occupancy of a hotel room from 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 Office of the Treasurer of the County of Adams.

Tourist Promotion Agency, or TPA. Gettysburg Travel Council, Inc., trading and doing business as Destination Gettysburg.

SECTION IV - IMPOSITION, RATE AND PURPOSE OF TAX

Effective October 1 2012, and reaffirmed April 18, 2018, there is imposed a Tax of five percent (5%) on the Consideration received by each Operator of a Hotel within the County, from each transaction of renting a room or rooms to accommodate transients.

SECTION V - COLLECTION, PAYMENT, REPORTS AND RETURNS OF TAX

1. Any Operator of a Hotel as defined in this Ordinance shall register with the Treasurer prior to the collection of Consideration for Occupancy of any Room within that Hotel, or within any Hotel managed by that Operator.

2. The Operator shall collect the Tax imposed by this Ordinance from the patron of the room and pay it to the County as provided herein. The Operator shall be liable to the County as agent thereof solely for the purpose of collection and payment of the Tax to the County Treasurer as provided in this section.

3. Every Operator shall transmit to the County Treasurer, on or before the twentieth (20th) day of each month, a Return which shall contain the Operator's activity for the previous month for which the Return is made, the amount of Consideration received for the Transactions during the month for which the return is made, the amount of Tax collected by the Operator during that month, the amount of Exemptions provided, and such other information as the Treasurer may require. The Operator shall also compute and pay to the County Treasurer the Taxes collected by the Operator for that period and due to the County, which payment shall accompany the monthly return. Each Operator has an affirmative duty to file a monthly Return for that Hotel, even if no Consideration has been received, nor any Room rented, for the monthly reporting period. Each Operator is also required to retain tax exemption certificates as proof for all tax Exemptions granted by that Hotel.

4. For purposes of timely payment determination, a payment will be considered paid by the twentieth (20th) of the month when either: (a) a mailed Return and payment bears a postmark date of the twentieth (20th) or earlier of that month; or (b) the Return and payment are made in person at the Treasurer's Office during normal business hours of 8:00 a.m. until 4:30 p.m. (as may be modified), by the close of business on the twentieth (20th) of that

month. Where the twentieth (20th) falls on a weekend or legal holiday, payment will be considered timely if the letter is postmarked with the next business day's date, or payment is made at the Treasurer's Office on the next business day.

5. The County Treasurer is hereby directed to collect the Tax from the Operator and to deposit the revenues received therefrom in a special fund established solely for the purpose of this Ordinance. The Treasurer shall distribute seventy-five percent (75%) of the net tax revenues to the recognized TPA by or on the tenth (10th) business day of the following month. This distribution shall be the full amount collected in the monthly period, less four and one-half percent (4.5%) of the gross for the administration fee as outlined in Section VII. Collection of the administrative fee will cease for the remainder of the tax year once either \$95,000.00 has been collected, or the amount collected is that satisfying the adjusted amount under the biennial CPI adjustment called for at 16 P.S. § 1770.7(e.2)(2). That adjustment was made in August 2017, and the current administrative fee is \$99,313. Collection of the administrative fee will be based upon that new figure after every biennial adjustment, which will be computed by the County and written notice provided to the TPA. The remainder of the Tax revenues, after removal of the administration fee when due, shall be distributed so that the TPA receives seventy-five percent (75%) and the County retains twenty-five percent (25%). The County shall compute the total Taxes as of the end of the tax year to determine the appropriate annual administrative fee for the gross taxes collected. The County shall report to the TPA within ninety (90) days of the end of the fiscal year the result of the end of year review, including total Hotel Tax revenues, total Hotel Tax collected, and administrative fees paid to the County. The report shall be accompanied by payment for any administrative fee overpayment, if such exists, or a statement and request for payment of underpaid fees.

6. The Commissioners are hereby authorized to establish rules and regulations concerning the collection of the tax. A copy of the rules and regulations are attached hereto as Exhibit "A." The Commissioners may modify these rules through action at any advertised public meeting.

7. Every report and Return required in compliance with the Ordinance concerning the payment and collection of the Tax shall be made upon a Remittance Form furnished by the County Treasurer's Office, a copy of which is approved as part of the rules and regulations, and included in Exhibit "A."

8. Every Operator shall maintain Records, which shall be made available to the Commissioners, the County Treasurer, the County Controller, and/or duly authorized agents (a "County Representative") upon request. Such Records shall be reviewed at least annually by a County Representative, and shall include, but not be limited to, the number of Transactions in each Hotel reflected on an hourly, daily, or weekly basis, the rate(s) charged for each occupancy, the Consideration received from all Transactions during the month for which each return is made, the Exemptions provided (with accompanying Tax Exemption

certificates providing proof of tax exemption eligibility), the Records relied upon for all tax returns, as well as such other information the County representative may require.

SECTION VI - USE OF REVENUES

The County and the TPA shall use the proceeds from this tax in accordance with Act 142 of 2000, as amended by Act 142 of 2012.

SECTION VII - ADMINISTRATIVE FEE

An administrative fee currently set at \$99,313 and subject to biennial review, shall be retained by the County for the purpose of recouping administrative costs incurred in the accounting, managing, collecting, and auditing of the Hotel Room Rental Tax. This fee shall be subject to an annual review, which shall ensure compliance with limitations contained in Act 142 of 2000, as amended by Act 142 of 2012, and codified at 16 P.S. § 1770.7. This fee is subject to biennial adjustment, as provided for in the enabling legislation. 16 P.S. § 1770.7(e.2)(2).

SECTION VIII – PENALTIES AND ENFORCEMENT

An Operator violates the provisions of this Ordinance when that Operator fails to timely pay all due Taxes, fails to timely file a monthly hotel room rental Tax Return (whether or not rooms are rented for the period), fails to register as a Hotel Operator, fails to provide adequate and acceptable business Records to support filed monthly hotel room rental tax Returns (including support for granted tax exemptions), or fails to fulfill any other obligation affirmatively required by this Ordinance.

Persons violating any provision of this Ordinance may be subject to the following penalties:

1. A penalty of \$50.00 for failing to file a timely monthly Return.
2. A penalty of \$75.00 for failing to file a timely monthly Return, if such failure occurs within six (6) months of a previous untimely Return.
3. A penalty of \$150.00 for failing to file a timely Return, where such failure has occurred within six (6) months of two (2) or more previous untimely Returns. For purposes of this provision, a period of six (6) or more months must pass since the most recent untimely Return before an Operator will be treated as if a subsequent untimely Return is the first such untimely Return.
4. A penalty of \$25.00 for failing to register as an Operator of a Hotel, after receipt of written notification, and the passage of thirty (30) or more days since mailing of the notification.

5. There shall be imposed a one and one-half percent (1.5%) charge per month interest on all outstanding Taxes, penalties, and other sums due and owing to the County, which shall be compounded on a daily basis.

6. Each separate violation, and separate day an Operator fails to comply with the Ordinance, may constitute a separate offense subject to the penalties and enforcement actions contained herein.

7. Any willful or negligent failure to comply with this Ordinance, other than those actions identified in Section VIII, 1 through 4, above, or after administrative of those penalties for items 1 through 4, above, may subject Operators to a fine of \$200.00 for the first month when this has occurred, \$400.00 for the second month occurring within ninety (90) days of the first occurrence, and \$600.00 for each third and subsequent occurrence within ninety (90) days of the previous occurrence. 16 P.S. § 509 (c) and (d).

8. Whenever any Operator shall fail to pay the Hotel Room Rental Tax as herein provided, upon request of the County Treasurer, the County Solicitor or any designated licensed attorney may, in addition to any other remedy provided by law, file or cause to be filed a municipal tax claim upon the Hotel in the name of the County and for the use of the County, as provided by law. In addition, The County Solicitor or any licensed designated attorney may bring or cause to be brought a civil action in any Court having jurisdiction to enforce the payment of all taxes and costs, including attorney fees or time, and late payment fees and penalties due.

9. All penalties and enforcement actions are cumulative. All fines and penalties shall be revenue solely of the County, as this is the product of County enforcement action.

10. The County may consider waiving late charges, penalties or interest, when extenuating or unusual circumstances exist. Any such request for waiver shall be made in writing to the Treasurer, and shall include the extenuating or unusual circumstances that are claimed as the reasons for the waiver. The Treasurer shall forward all requests to the Board of Commissioners, along with the Treasurer's recommended actions concerning the request. The decision to issue a complete waiver, partial waiver, or to deny the request for the waiver, will rest solely with the Board of Commissioners, who will issue a response in writing within thirty (30) days of receipt of the request in the Commissioners' Office.

SECTION IX – APPEAL PROCESS

A Hotel Operator aggrieved by any decision of the County or the duly authorized agent of the County with respect to the amount due for the Hotel Room Rental Tax, late charges, interest, costs, attorney fees, fines, or other enforcement actions, may appeal the decision as provided for by the Pennsylvania Local Agency Law, Act 53 of 1978, P.L. 202, codified at 2 Pa. C.S. § 551, and applicable Pennsylvania Rules of Civil Procedure.

SECTION X – DISCLOSURE OF INFORMATION

All reports, Returns, and forms submitted to the Treasurer or the County are subject to public disclosure under the Pennsylvania Right to Know Law (“RTKL”), and determinations and case law interpreting the RTKL. The Treasurer shall not disclose any confidential information that is otherwise protected by law.

SECTION XII - REPEAL

Ordinance No. 3 of 2012 is repealed, effective midnight, April 30, 2018. All resolutions or ordinances, or parts of resolutions or ordinances, in conflict with the provisions of this Ordinance, are hereby repealed.

SECTION XIII - 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 portion of the Ordinance.

SECTION IV - EFFECTIVE DATE

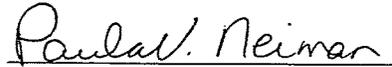
This Ordinance shall be effective May 1, 2018, at 12:01 a.m., and shall remain in effect until the expiration of the appropriate enabling legislation, or amendment thereof, or by appropriate action of the Commissioners.

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SIGNATURE PAGE FOLLOWS.]**

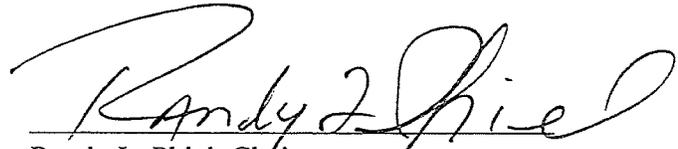
DULY ENACTED AND ORDAINED, in a public meeting duly convened, this 18th day of April 2018.

ATTEST:

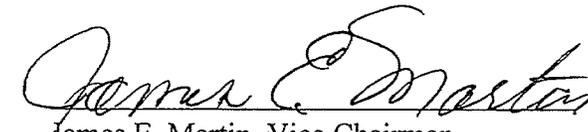
ADAMS COUNTY COMMISSIONERS



Paula V. Neiman, Chief Clerk



Randy L. Phiel, Chairman



James E. Martin, Vice Chairman



Marty Karsteter Qually, Commissioner